

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1264

B
Pys

In The
United States Court of Appeals
For The Second Circuit

ORIGINAL

UNITED STATES OF AMERICA,

Appellee,

-against-

ANTHONY NAPOLI,

Defendant-Appellant.

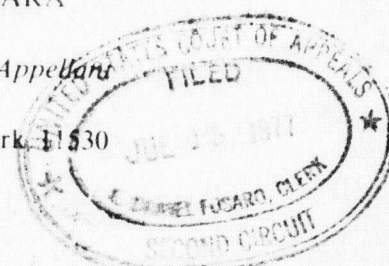
*On Appeal from a Judgment of Conviction of the United
District Court for the Southern District of New York.*

JOINT APPENDIX

Volume I, pp. 1a - 200a

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RELEVANT DOCKET ENTRIES

(pp. 1a-2a)

PETTY OFFENSE: PE OTHER MINOR OFFENSE: MO OTHER MISDEMEANOR: M FELONY: F		JUDGE: J CLERK: C 0208 1 0834	U.S. JUDGE: J CLERK: C NAPOLI, ANTHONY	Case Filed: 03 03 Date: 77 0167 JUVENILE: 01
U.S. TELL/SECTION 18:287 18:1001 18:1623		OFFENSES CHARGED False medicaid claims against Dept. of H. E. W. 1-20 False statements in a matter within jurisdic- 21-40 tion of Dept. of H. E. W. Perjury before Grand Jury 1		
II. KEY DATES & INTERVALS ARREST: 3-10-77 Summons Served: 3-10-77 First Appearance: 3-10-77 Indictment: 3-10-77 Superseding Indictment: 3-10-77		ORIGINAL COUNTS: 1 SUPERSEDING COUNTS: 5-2-77 5-3-77		
SEARCH WARRANT: Issued, Returned SUMMONS: Issued, Served ARREST WARRANT: Issued COMPLAINT: OFFENSE (in Complaint):		MAGISTRATE INITIAL APPEARANCE DATE: 3-10-77 PRELIMINARY EXAMINATION: 3-10-77 REMOVAL HEARING: 3-10-77 WAIVED: 3-10-77 INTERVENING INDICTMENT: 3-10-77		
U.S. Attorney or Asst: George E. Wilson 791-1952		ATTORNEYS Joseph Fontana 32 Court St., Brooklyn, N.Y. 10013 625-0095 Jeff Weisenfeld 401 E'way New York, N.Y. 10013 Tel: 925-8844		

DATE	(DOCUMENT NO.)	PROCEEDINGS
3-3-77		Filed Indictment.....Frankel, J.
3-10-77		Deft. (atty. J. Jeffrey Weisenfeld present) pleads not guilty. Ordered F/P. R.O.R. Case assigned to MacMahon, J. for all purposes.....Bryan, J.
3-10-77		Filed NOTICE OF APPEARANCE of JEFFREY WEISENFELD, 401 E'way n, Y., N.Y. 10013 Tel: 925-8844,
3-24-77		Deft's Filed/NOTICE OF MOTION AND AFFIDAVIT for an order dismissing the indictment. etc.
3-28-77		Filed AMEMO-ENDORSED of deft's motion for an order dismissing the indictment. Motion denied inpart and granted inpart. So ordered, MAC MAHON, J. m/n.
4-28-77		Filed Govt's Affidavit for W/H/C Ad Testificandum of Max Kavalier. RET: 5-2-77
5-2-77		Deft. present(attyJeffery Weisenfeld) for trial. Gov't not prosecuting on cts 1 thru 20,24,27,31,37 and 40.

UJIM AQ 206

con't on page #2.

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UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535
EX-100 (Rev. 1-15-77)

LETTER CODES

DATE	IN PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY		LETTER CODES
			Actual	Total	
			(1)	(2)	(3)
5-3-77	Deft. present (atty Weisnefeld) trial continues & concluded Jury retires at 3:05 PM & returns verdict at 5:30 PM. Guilty on all counts prosecuted (21 thru 23,25 thru 28,30,32 thru 36, 38,39 and 41.) Sentencing will take place on 5-17-77... MacMahon,J.				A. Examination of records of the defendant in the past 12 months under 3161 C.D. 424
5-4-77	Filed Gov'ts Request to Charge.				B. AUSA's recommendation (26 U.S.C. 2402)
5-6-77	Filed Writ of H/C/ Ad Test. of Max Kavalier.				C. State or Federal trial on other charges
5-24-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The Deft is committed to the custody of Atty Gen for a period of TWO (2) YEARS and FINED \$10,000. on each of Counts 21 through 23, 25 through 28, 30,32 through 36,38 & 39, to run concurrently with each other. TWO (2) YEARS and FINED \$10,000. on Count 41. Execution of the prison sentence on Count 41 is SUSPENDED and deft is placed on PROBATION for a period of TWO (2) YEARS to run consecutively to the prison sentence imposed on Counts 21 through 23,25 through 28,30, 32 through 36,38 & 39, subject to the standing probation order of this Court. The Fine im- posed on Counts 21 through 23,25 through 28,30,32 through 36, 38& 39 and the Fine imposed on Count 41 are to run consecutively, for a total FINE of \$20,000. and deft is to stand committed until the total fine is paid. Deft is released on his own recognizance pending appeal on the condition that the appeal is pursued within the minimum time allowed by the Court of Appeals. Counts 1 thru 20,24,29,31 & 40 are dismissed on motion of de- fense counsel with the consent of the Govt. So ordered MAC MAHON, J. (all copies issued).				D. Interlocutory Appeals E. Hearings on pretrial motions F. Transfers from other districts under F.R.C.P. Rules 20, 21 & 40 G. Defendant Mo- tion is actually under advisement Period of up to 30 days is excludable per 3161(h)(1)(G) H. Miscellaneous Proceedings Probation or Parole revoca- tion, Deporta- tion, Extradition Prosecution dis- missed by mutual agree- ment I. Unavailability of defendant or essential witness J. Period of men- tal or physical incompetence of defendant to stand trial K. Period of NARA Com- munity or Treatment L. Superseding indictment and/or new charges M. Defendant awaiting trial of Co-defen- dant when no severance has been granted N. Continuances Granted per 3161(h)(8) O. Period of justice or com- munity of case or interests of defendant P. Time between guilty plea and plea with- drawal Q. Grand Jury in- dultment ex- penditure per 3161 (b)
5-24-77	Filed NOTICE OF APPEAL to the USCA by the deft from the Judgment dated 5-24-77. Mailed Notices to the Counsel for Appellant and US Atty.				

FINE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

INDICTMENT

(Filed March 3, 1977) (pp. 3a-8a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA, :

-v- :

ANTHONY NAPOLI, :

Defendant. :

INDICTMENT

77CR167

-----x
The Grand Jury charges:

1. On July 30, 1965, Title XIX of the Social Security Act (the "Medicaid Act") was enacted creating the Medicaid program.

2. Pursuant to the Medicaid Act, the United States Department of Health, Education and Welfare shares with each state the cost of medical services to families with dependent children and to aged, blind, or permanently and totally disabled individuals whose income and resources are insufficient to meet the costs of necessary medical services.

3. The Medicaid program further provides for rehabilitative and other services to help such families and individuals attain or retain capability for independence and self-care.

4. Pursuant to the Medicaid Act each state must promulgate a plan for Medicaid assistance.

5. On May 1, 1966 the State of New York enacted a statewide medical plan in accordance with the provisions of the Medicaid Act.

6. The New York State Social Welfare Law vests responsibility for the medical assistance program within New York State in the State Department of Social Service.

7. The Department of Social Services of the City of New York, located at 330 West 34th Street in Manhattan, processes and pays claims by various providers for Medicaid services rendered within New York City. The nature and amount of all such claims is reported monthly by New York City to the New York State Department of Social Services.

8. The New York State Department of Social Services submits quarterly to the Department of Health, Education and Welfare a report detailing the nature and amount of such claims.

9. The Department of Health, Education and Welfare reimburses federally qualified claims at the rate of fifty cents on each dollar paid by the State of New York.

10. At all times material herein ANTHONY NAPOLI, the defendant, was licensed by the State of New York as a Chiropractor and was certified by the City of New York as a Medicaid provider. Defendant practiced among other places at the Galler Medical Center, 858 Flushing Ave. Brooklyn, N.Y. and the Lee Avenue Medical Center at 166A Lee Ave. Brooklyn, N.Y. The business of said clinics is to provide Health-care services to Medicaid-eligible patients.

COUNTS ONE THROUGH TWENTY

The Grand Jury charges:

11. That on or about the dates set forth below, ANTHONY NAPOLI, the defendant, unlawfully, wilfully and knowingly, engaged in a scheme and artifice to defraud the City of New York, the State of New York and the United States, whereby he would obtain money by false, fictitious and fraudulent pretenses and representations.

12. That on or about the dates set forth below, in execution of the aforesaid scheme and artifice to defraud, in the Southern District of New York, ANTHONY NAPOLI, the defendant, unlawfully, wilfully and knowingly did make and present, and cause to be made and presented to the United States Department of Health, Education and Welfare, a department and agency of the United States, for payment, certain claims upon and against the United States, to wit, various "Invoices for Doctor's Services", which invoices contained certification that the services described therein were rendered by him at certain times to certain Medicaid patients when in truth and in fact, as the defendant, ANTHONY NAPOLI, then and there well knew said claims were false, fictitious and fraudulent in that some or all of the said services had not been rendered.

<u>COUNT</u>	<u>DATE</u>	<u>NAME</u>	<u>INVOICE NUMBER</u>
1	4/10/72	Rosaline <u>Ero</u>	S896339
2	3/21/72	Nydia <u>Barrentes</u>	R649539
3	5/2/72	Barbara Tolliver ✓	R649606
4	5/2/72	Garrie Graham ✓	R649747
5	5/23/72	Sara Diaz ✓	S896390
6	6/14/72	Dorothy Lee ✓	R649691
7	7/5/72	Louise Cherry ✓	S896440
8	7/5/72	Bertha <u>Cunningham</u> ✓	R649726
9	7/5/72	Milagros <u>Lugo</u> ✓	R649714
10	7/5/72	Lynette Brown ✓	S896436
11	7/26/72	Shirley Anne Crawford ✓	X837294
12	7/26/72	Lillie Smith ✓	X837268
13	8/16/72	Angelica Gonzalez ✓	X837357
14	8/16/72	Ramona Soler ✓	X837341

<u>LINE</u>	<u>DATE</u>	<u>NAME</u>	<u>INVOICE NUMBER</u>
16	9/6/72	Eneida Rivera ✓	X837445
17	9/26/72	Ruth Barnes ✓	A478122
18	9/26/72	Jennie Gonzalez ✓	A478125
19	9/26/72	Margaret Jackson ✓	A478151
20	10/17/72	Isabel Mulero ✓	A478346

(Title 18, United States Code, Sections 287 and 2.)

COUNTS TWENTY-ONE THROUGH FORTY

The Grand Jury further charges:

13. That on or about the dates set forth below, in the Southern District of New York, in a matter within the jurisdiction of a department and agency of the United States, to wit: the United States Department of Health, Education and Welfare, ANTHONY NAPOLI, the defendant, unlawfully, wilfully and knowingly did falsify, conceal and cover up, and cause to be falsified, concealed and covered up, by trick, scheme and device, material facts, and did make and cause to be made false, fictitious and fraudulent statements and representations and did make and cause to be made and did use and cause to be used false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries, in that the defendant, ANTHONY NAPOLI, submitted and caused to be submitted to the United States Department of Health, Education and Welfare various false and fraudulent statements which were based in part upon Invoices for Doctor's Services in which defendant certified and caused to be certified that the services described therein had been rendered by him to the medicaid patients listed therein, when, in truth and in fact, as the defendant then and there well knew, said certifications were false in that some or all of the claimed services had not been rendered.

	<u>DATE</u>	<u>NAME</u>	<u>INVOICE NUMBER</u>
11	4/10/72	Rosaline Ero	S896339
12	3/21/72	Nydia Barrantes	R649539
13	5/2/72	Barbara Tolliver	R649606
14	5/2/72	Garrie Graham	R649747
15	5/23/72	Sara Diaz	S896390
16	6/14/72	Dorothy Lee	R649691
17	7/5/72	Louise Cherry	S896440
18	7/5/72	Bertha Cunningham	R649726
19	7/5/72	Milagros Lugo	R649714
20	7/5/72	Lynette Brown	S896436
21	7/26/72	Shirley Anne Crawford	X837294
22	7/26/72	Lillie Smith	X837268
23	8/16/72	Angelica Gonzalez	X837357
24	8/16/72	Ramona Soler	X837341
25	8/16/72	Regina Smith	X837358
26	9/6/72	Encida Rivera	X837445
27	9/26/72	Ruth Barnes	A478122
28	9/26/72	Jennie Gonzalez	A478125
29	9/26/72	Margaret Jackson	A478151
30	10/17/72	Isabel Mulero	A478346

(Title 18, United States Code, Sections 1001 and 2.)

COUNT FORTY-ONE

The Grand Jury further charges:

14. On or about January 16, 1975, in the Southern District of New York, ANTHONY NAPOLI, the defendant, having duly taken an oath that he would testify truthfully before a Grand Jury of the United States, to wit, the December 1974 Additional Grand Jury, duly impaneled and sworn in the United States District Court for the Southern District of New York, and inquiring for that District, in a case then and there pending before said Grand Jurors, in which a law of the United States authorizes an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make a false material declaration during a proceeding before said Grand Jury.

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15. At the time and place aforesaid, said Grand Jury was conducting an investigation into violations of Title 18, United States Code, Sections 287, 371, 1001 and 1341 and in particular was investigating whether fraud and abuse had occurred in connection with claims for payment under the Medicaid Act by various providers of health services, including medical doctors, dentists, chiropractors, podiatrists, opticians and medical laboratories.

16. It was material to the above described investigation being conducted by said Grand Jury to ascertain whether ANTHONY NAPOLI, the defendant, had ever submitted or caused to be submitted false claims and statement under Medicaid or has conspired to do so.

17. At the time and place alleged in paragraph 14 of this indictment, ANTHONY NAPOLI, the defendant, duly appeared before said Grand Jury, and then and there, having taken an oath that he would testify truthfully, did unlawfully, wilfully and knowingly made the following false material declarations:

"Q. Dr. Napoli, did you ever submit a fictitious invoice in the sense that you either billed for a patient you had not seen or billed in excess of a number of visits you actually administered?

A. No, I have not."

(Title 18, United States Code, Section 1623.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

NOTICE OF MOTION
(Filed March 24, 1977)
(pp.9a-10a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAR 24, 1977
D. OF N. Y.

UNITED STATES OF AMERICA

-v-

NOTICE OF MOTION

ANTHONY NAPOLI,

77 Cr. 167
(LFM)

Defendant

SIR:

PLEASE TAKE NOTICE that the undersigned will move this Court on the 31st day of March, 1977 for an order granting the following relief:

- 1) Dismissal of the indictment on the grounds of pre-indictment delay.
- 2) Dismissal of the indictment on the ground that 18 to 24 year olds have been systematically excluded from both grand and petit jury lists.
 - a. An order permitting inspection and copying of the grand jury selection lists and any and all other papers used by the jury commission or clerk in connection with the grand jury selection process.
 - b. An order permitting the same relief as requested in 2(a) above, but relating to the petit jury.
- 3) Dismissal of counts 1-40 on the ground that said counts fail to state a federal crime.

4. Dismissal of counts 1-41 on the ground that the grand jury did not vote separately on each said count.
5. An order requiring the government to supply a list of its witnesses along with their last known addresses.

and for such other and further relief which may to the Court seem just and proper.

Dated: New York, New York

March 24, 1977

Yours, etc.,

J. JEFFREY WEISENFELD
Attorney for Defendant
401 Broadway
New York, New York 10013
(212) 925-8844

TO: United States Attorney
Southern District of New York
1 St. Andrews Plaza
New York, New York

AFFIDAVIT OF JEFFREY WEISENFELD IN SUPPORT OF MOTION
(pp. 11a-16a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

-v-

AFFIDAVIT

77 Cr. 167

ANTHONY NAPOLI,

Defendant

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

J. JEFFREY WEISENFELD, being duly sworn deposes and
says:

1. I am the attorney of record for the defendant in
the above-entitled case and make this affidavit in support of
defendant's motions for dismissal of the indictment or specific
counts thereof and defendant's motion for an order requiring the
government to supply a list of witnesses.

2. I make this affidavit upon information and belief,
the sources of that information and belief being the court papers
and records and discussions with the Assistant United States
Attorney and the defendant.

3. Pursuant to court rules I have conferenced this
case with Mr. Wilson of the United States Attorney's Office.

Annexed hereto as Exhibits "A" and "B" are my requests for discovery

and a bill of particulars and the government's response thereto.

4. Pursuant to the request of the Court at the pre-trial conference, this affidavit sets forth the grounds for these motions in summary form only.

5. As to the motion to dismiss the indictment on the grounds of pre-indictment delay:

a. Some time prior to defendant's appearance before the Grand Jury in January, 1975, the defendant voluntarily turned over his personal records to the government. Upon the return of these records the defendant, seeing no need to retain the papers, and in the process of moving, threw his records away.

b. More than two years after his grand jury appearance, the defendant was named in the instant indictment.

c. This two year delay results in actual prejudice to defendant in preparing his defense due to the loss of this evidence and inability to locate witnesses. United States v. Marion, 404 U.S. 307, 325-26 (1971); United States v. Cheung Kin Ping, ___ F.2d ___, slip op. p.2063 (2d Cir. Feb. 28, 1977). This is especially so because the government has refused to supply a list of its proposed witnesses and their last known addresses.

6. As to the motion to dismiss the indictment on the ground that 18 to 24 year olds have been systematically excluded from both grand and petit jury lists and for an order permitting inspection and copying the jury lists and other relevant records.

a. The exclusion of 18 to 24 year olds from the grand

and petit jury master lists is in violation of defendant's Sixth Amendment rights and the provisions of 28 U.S.C. §§1861 et seq.

b. Inspection and copying of the requested records is essential to discover evidence to buttress these claims.

c. Defendant has an unqualified right to inspect such lists. Test v. United States, 420 U.S. 28 (1975); 28 U.S.C. §1867(f).

7. As to the motion to dismiss counts 1-40 of the indictment on the ground that said counts fail to state a federal crime:

a. 18 U.S.C. §287 makes illegal the fraudulent presentation of claims "to any person or officer in civil...service of the United States, or to any department or agency thereof..." The indictment, though, states that claims are processed and paid by the Department of Social Services of the City of New York to the various providers of Medicaid services rendered within New York City(¶7). The defendant was such a provider (¶10).

b. Neither the New York City Department of Social Services nor the New York State Department of Social Services is a "department or agency" of the United States, as defined in 18 U.S.C. §6.

c. The mere fact that the federal government partially funds the Medicaid program in New York does not present sufficient

connection with the state and city Departments of Social Services to warrant characterizing claims submitted to them as claims against the United States. Therefore, the indictment should be dismissed. Contra, United States v. Catena, 500 F.2d 1319 (3rd Cir. 1974); United States ex rel. Davis v. Long's Drugs, Inc., 411 F.Supp. 1144 (S.D.Cal. 1976).

8. As to the motion to dismiss counts 1-41 of the indictment on the grounds that the grand jury did not vote separately on each count:

a. The instant indictment contains forty-one charges against defendant. Since each count of an indictment is equivalent to a separate indictment,* the Fifth Amendment guarantee of indictment by a grand jury and F.R. Crim. Proc. Rule 6(f) should be construed to require a specific finding of probable cause for each of the charges brought against defendant.

b. The only way to determine if this procedure was followed is from the record of the grand jury's vote which Rule 6(c) requires to be kept. Defendant therefore requests this Court order disclosure of said record pursuant to Rule 6(c). Such a request was granted by Judge Judd of the United States District Court for the Eastern District of New York, in United States v. Vario, 73 Cr. 1068 (order of February 1, 1974). Following disclosure and an evidentiary hearing, Judge Judd denied the motion to dismiss. Cf. United States v. Zirpolo, 288 F.Supp 993,1013-14 (D.N.J. 1969). In Zirpolo, the court was satisfied, through the affidavit of the prosecutor, that the grand jury had given

*See, e.g., Thomas v. United States, 398 F.2d 531,537 n.10 (5th Cir. 1967); United States v. Cruz, 313 F.2d 337 (3rd Cir. 1963).

particularized attention to each defendant's involvement in each count. Absent such a showing here, the indictment should be dismissed.

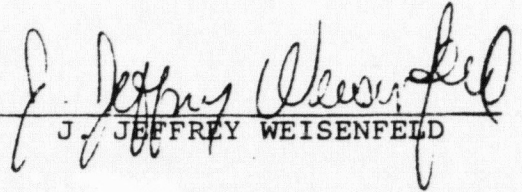
9. As to the motion for an order requiring the government to supply a list of witnesses and their last known addresses:

a. This court has the authority to grant this motion. United States v. Baum, 482 F.2d 1325 (2d Cir. 1973); United States v. Cannone, 528 F.2d 296 (2d Cir. 1975).

b. Under the circumstances of this case, it would not be an abuse of discretion for the court to order such disclosure. The events in question occurred approximately five years ago. Since that time defendant's records have been destroyed. The two year delay by the government in instituting this prosecution also must be considered as a circumstance justifying disclosure. The passage of time, the dimming of memory, and the loss of his records significantly hamper the defendant and counsel in the investigation and preparation of his defense. The granting of such disclosure in this case is both necessary and reasonable in light of the circumstances. Cannone, supra at 301. The government would be hard pressed to even assert that the giving of this list would result in any threat or danger to its witnesses.

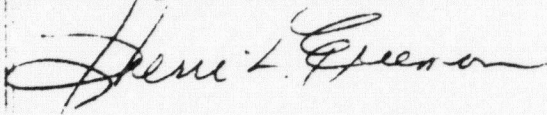
WHEREFORE it is respectfully requested that the court grant the relief requested and for such other and further

relief which may to this court seem just and proper.


J. JEFFREY WEISENFELD

Sworn to before me this

24th day of March, 1977



77

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT:

EXHIBIT A - LETTER FROM AFFIANT TO GEORGE WILSON DATED
MARCH 17, 1977 (pp. 17a-18a)

17a

JOSEPH WEINSTEIN
OF NEW YORK

NEW YORK, NEW YORK
NEW YORK

March 17, 1977

Mr. George Wilson
United States Attorney's Office
Southern District of New York
1 St. Andrews Plaza
New York, New York

Re: United States v. Anthony Napoli
77 Cr. 167

Dear Mr. Wilson:

The following are defendant's request for
discovery:

1. The Grand Jury testimony of Dr. Napoli given on or about January 16, 1975.
2. The instructions given by Assistant United States Attorney to the Grand Jury which indicted Dr. Napoli.
3. A copy of any written statements made by Dr. Napoli, and the substance of any oral statements made by Dr. Napoli.
4. A copy of all of Dr. Napoli's personal and business records in the possession of the government.
5. A copy of all the documentary, tangible or other real evidence including but not limited to invoices, treatment plans, which the government intends to introduce at trial.
6. A copy of any results or reports of any scientific tests made by the government pertaining to this case.
7. The names of any unindicted co-conspirators.
8. All statements of persons who may reasonably be expected to be government witnesses.
9. A list of the names and last known addresses of each and every witness that the government intends to call at trial.

EXHIBIT A"

18a

March 17, 1977

-2-

10. All physical or other tangible evidence seized from the person of Dr. Napoli or from premises under his control.

11. All relevant photographs in the government's possession.

12. All relevant tape recordings in the government's possession.

13. Any and all information indicating the existence of unlawful electronic surveillance of any of Dr. Napoli's conversations, including but not limited to any warrants, or one party consensual interceptions.

14. Any and all exculpatory evidence, including material potentially useful for impeachment of any witness who may be expected to testify on behalf of the government at trial.

The following constitutes defendant's requests for a bill of particulars:

1. Whether the same Grand Jury which heard Dr. Napoli's testimony entered the instant indictment.

2. Whether Dr. Napoli was a target of the Grand Jury investigation at the time he testified.

3. The date or dates on which the government came into possession of any and all of Dr. Napoli's personal or business records.

a. The manner in which the above records were obtained (i.e. by subpoena, voluntarily, etc.)

b. From whom and from what locations were these records obtained.

4. The dollar amount alleged as to each illegally false invoice or other document submitted by Dr. Napoli.

These requests call for information and evidence within the possession of the government and which may by the exercise of due diligence come into its possession. These request are continuing in nature.

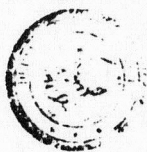
Very truly yours,

J. Jeffrey Weisenfeld
J. JEFFREY WEISENFELD

BEST COPY AVAILABLE

EXHIBIT B - (LETTER FROM GEORGE WILSON TO AFFIANT DATED
MARCH 22, 1977 (pp. 19a-20a)

19a



United States Department of Justice

UNITED STATES ATTORNEY

SOUTHERN DISTRICT OF NEW YORK

ONE OF ANDREWS PLAZA

NEW YORK, NEW YORK 10007

ADDRESS ONLY TO
UNITED STATES ATTORNEY
AND BUREAU
INITIALS AND NUMBER

GEW

March 22, 1977

J. Jeffrey Weisenfeld, Esq.
401 Broadway
New York, New York 10013

Re: United States v. Napoli
77 Cr. 167

Dear Sir:

This is in response to your letter of March 17, 1977
in which you have requested discovery and particulars.

We consent to each item except numbers 2, 8 and 9 of
the discovery and 3 and 4 of the particulars.

Brady material will be furnished 10 days prior to
trial. 3500 material will be provided on the morning of the
witness' appearance.

You will receive copies of each invoice named in the
indictment and may inspect all of the remaining invoices.

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By: George E. Wilson
GEORGE E. WILSON
Assistant U. S. Attorney



EXHIBIT "B"

NOTICE OF ENTRY

Sir: Please take notice that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within
named court on

19

Dated,

Yours, etc.,
NANCY ROSNER

Attorney for

Office and Post Office Address

401 Broadway
NEW YORK, N. Y. 10013

To

Attorney(s) for

20a

NOTICE OF SETTLEMENT

Sir: Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

the day of 19

at M.

Dated,

Yours, etc.,
NANCY ROSNER

Attorney for

Office and Post Office Address

401 Broadway
NEW YORK, N. Y. 10013

To

Attorney(s) for

Index No.

Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-V-

ANTHONY NAPOLI,

Defendant

NOTICE OF MOTION & AFFIDAVIT

NANCY ROSNER

Attorney for Defendant

Office and Post Office Address, Telephone

401 Broadway
NEW YORK, N. Y. 10013
(212) 925-8844

To

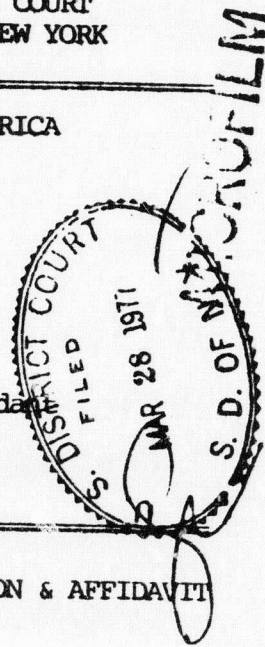
Attorney(s) for

Service of a copy of the within

Dated,

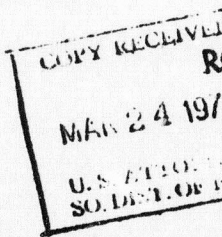
is hereby admitted.

Attorney(s) for



*New York, N.Y.
March 25, 1977*

*On consent of the Government, defendant's
counsel may inspect the jury lists
requested in paragraphs 2(a) and (b) of
the within motion. In all other respects,
the within is deemed to be the reasons*



the motion was
dictated in to the record.
So ordered.

Lloyd F. MacMahon

ROBERT B. FISKE JR.

NY
N.Y.

TRANSCRIPT OF PROCEEDINGS BEFORE HON. LLOYD F.
MacMAHON, D.J. DATED MARCH 25, 1977

21a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA, :
:
vs. : 77 Cr. 167
:
ANTHONY NAPOLI, :
:
Defendant. :
:
-----X

Before:

HON. LLOYD F. MacMAHON,
District Judge.

New York, March 25, 1977;
11.00 o'clock a.m.
(Room 905)

APPEARANCES:

ROBERT B. FISKE, JR., Esq.,
United States Attorney for the
Southern District of New York;
BY: GEORGE WILSON, Esq.,
Assistant United States Attorney.

J. JEFFREY WEISENFELD, Esq.,
Attorney for Defendant.

(In the robing room.)

THE COURT: Did you ask for this conference, Mr. Weisenfeld?

MR. WEISENFELD: Yes.

Basically I just wanted to orally argue one point where there was a refusal by the Government to consent to a request for a discovery, and that pertained solely to the witness list that we had requested, a list of the Government's witnesses.

The other matters, as your Honor indicated at the pretrial conference, I made in very summary fashion, your Honor indicated that if your Honor felt there was an merit to any of them, you would request from me further briefs, memoranda, or whatever; so I am not intending to argue those today, just the witness list, which I feel is vital to the preparation of our defense, and I believe under the circumstances of this particular case is an application which the Court in its discretion should grant.

I am fully cognizant that the mandatory witness list provisions in the proposed Rule 16 were deleted, but I don't feel that has any impact on the previous case law in the Second circuit under United States versus Bauman and United States versus Cannone, which grant the

District Courts discretion to give a witness list under appropriate circumstances.

The reason why in this particular case I feel it is appropriate for the defendant to have a witness list is as follows:

Prior to 1975 all of Dr. Napoli's records were voluntarily turned over by him, or in other ways obtained by the Government, not pursuant to subpoena. All of his business records were obtained.

Dr. Napoli also went before the grand jury, waived immunity, went there without an attorney and testified before the grand jury.

Subsequent to that, at a date he can't remember, when he was moving out of his house, he had a box with all those records in it. They fell out, they got all messed up, and he threw them away.

Now, it certainly was not out of any desire to hide anything because he knew the Government had had all these records, had made copies of everything, and he just had them back.

At that point he felt he had no further use for them; they were four or five-year old records --

THE COURT: This was after he had gone to the grand jury?

1 MR. WEISENFELD: Yes.

2 THE COURT: Did he know that he was a target
3 before the grand jury?
4

5 MR. WEISENFELD: It was mentioned to him.
6 The way it was phrased to him:

7 "If you have done anything improper, then
8 you may be a target."

9 THE COURT: They asked for his records to see
10 whether he had done anything improper; that was pretty
11 evident to him, I'm sure.

12 MR. WEISENFELD: His state of mind was --
13 He understood it might be possible, but he felt he had
14 done nothing wrong, and he didn't feel he needed to keep
15 his records because he did not feel he was a target,
16 because not having done anything wrong he could not be
17 a target. But, in any event, he didn't keep his records,
18 but this is not a situation where he destroyed anything
19 or wanted to hide any evidence because the Government
20 had it already. It may have been a foolish thing to do,
21 but it wasn't with any culpable state of mind.

22 Now, I am informed, and I believe that the
23 Government's case, aside from its technical witnesses,
24 is going to be basically 20 or so of his ex-patients who
25 will testify that the vouchers that he submitted were

1 incorrect, fraudulent, if you will, in that they saw
2 him many fewer times than shown on the invoices.

3 Now, the only way we can prepare for this
4 trial, naturally, is to try and contact these witnesses.

5 Now, the Government waited two years after
6 Dr. Napoli's appearance before the grand jury to indict
7 him.

8 Now, because of this two-year delay, even if
9 we were to reconstruct his records, many of these
10 witnesses have moved; most of them are poor people
11 whose addresses have changed, and it is absolutely
12 impossible for us to locate them.

13 THE COURT: How many patients did he have at
14 this time?

15 MR. WEISENFELD: Hundreds and hundreds.

16 Certainly, in this type of case -- we are
17 talking about a Medicaid fraud case; we are talking about
18 a chiropractor, married, with children, no criminal
19 record, and I don't believe the Government can reasonably
20 assert that there is any danger to any witnesses; that
21 Dr. Napoli in any way will attempt to put leverage on
22 them or threaten them in any way. This is purely to
23 assist me in preparing a very complex defense which hinges
24 on the credibility of these 20 or so patients, and we
25

1 sls
2 have to locate them.

3 I don't believe it will be possible for us
4 to locate the bulk of them without the assistance of the
5 Government, but it would seem to me the nature of the
6 crime charged, the circumstances of a two-year delay
7 between his appearing in the grand jury and indictment,
8 the fact that these events relate to treatments of four
9 or five years ago, that this is a proper case for your
10 Honor to exercise discretion that the Government give us
11 a list of their witnesses.

12 We actually know the names of the witnesses
13 because they are the 20 people shown in the indictment.
14 The only thing we would like is their present addresses
15 to the extent that the Government knows them so that we
16 could send an investigator out and speak to them. If
17 they they don't want to speak to the investigator, they
18 don't have to, naturally. But if they do we would like
19 to interview them so that we can prepare for trial.

20 It seems to me under the circumstances of
21 this case this would be no hardship to the Government to
22 supply them; there is no threat or danger to any of the
23 witnesses, and it's very important to the preparation
24 of this defense.

25 For that reason I came in to ask your Honor in

your discretion to grant us the witness list.

THE COURT: Mr. Wilson?

MR. WILSON: Your Honor, may I inquire of counsel whether Dr. Napoli's address is still 8404 13th Avenue, Brooklyn?

MR. WEISENFELD: Are you talking about his home address?

MR. WILSON: His home address.

MR. WEISENFELD: His office address is 8404 13th Avenue, but his home address is 611 Lamoka Avenue, Staten Island, New York.

MR. WILSON: I wonder, your Honor, if I can inquire when he moved to that address?

MR. WEISENFELD: At this time I don't really know when he moved to that address. I know that he recently, subject to correction at a later date, I believe within the last year or two they bought a house on Staten Island and they moved to this house on Staten Island from either an apartment of another house in Brooklyn, but I believe he has lived therefor some time, because I know that his wife has been elected as the president of the local community booster society, whatever they are called out there, so I would assume he has been there for some time, and has very substantial connections in the

community as far as being active in the community.

So I think he's been there for some time, but I can't really make a definitive statement about that.

MR. WILSON: Your Honor, let me give you the background of Dr. Napoli's connection with the Government's investigation:

He was one of many people appearing before the grand jury in the beginning of 1975 in connection with the Ingber Styles Medicaid mill investigation.

Dr. Napoli worked in one of the clinics run by these two chiropractors.

As a result of that investigation there have been 28 convictions of doctors and other people who worked in this series of eight Medicaid mills.

At the time he was called before the grand jury he was one of the doctors that worked in one of these eight clinics, and he was questioned about his billing practices, generally his procedure, the way the clinics ran, his connection with Ingber Styles, and there is evidence that he paid Ingber a certain percentage of his take from Medicaid.

At that time he did produce records. Most of the records he produced we have. We have his appointment book; we have his invoices; we have medical records

1 sls
2 that belonged to the clinic, and whatever records there
3 are on the patients we have in our possession, and
4 they will be subject to inspection and copying, of
5 course.

6 In December of 1975 or the beginning of 1976,
7 myself and Joel Rosenthal, who was also working on the
8 investigation, began calling in the doctors we felt we had
9 evidence on who had committed violations of various laws,
10 and we presented them and their attorneys with the
11 option of pleading to informations or being indicted.

12 As a result of this systematic calling in of
13 doctros, about 20 -- I think 22 doctors and other people
14 pleaded to criminal informations.

15 I don;t recall the exact time Dr. Napoli and
16 Mr. Fontana, who was his attorney at that time,
17 came in.

18 However, at that time they offered a defense
19 to what we felt was fairly strong evidence, and we took
20 that under consideration. They pledged their co-
21 operation to help us straighten out this matter.

22 The question of the appointment book was
23 discussed, and we were assured that they would cooperate
24 in every way in straightening out this matter.

25 With the trials in the other matters which

1 sls
2 had priority than the Napoli case at that time, and in
3 the order of the way in which we were approaching these
4 cases -- we had statute of limitations problems -- we
5 did not get an opportunity to turn our attention back
6 to the Napoli case and tried to deal with what his
7 representations were until late fall of last year.

8 As you know, in March the indictment came
9 down.

10 So contrary -- and I am sure Mr. Weisenfeld
11 didn't have this knowledge -- there wasn't just one
12 appearance in January 1975 before a grand jury, and then
13 total, utter silence from our office until March of
14 1977.

15 Dr. Napoli was made painfully aware in 1976
16 that we were ready to indict him. The only reason we
17 didn't is that we wanted to give him the absolute benefit
18 of the doubt, and so we held back and we reinvestigated
19 the entire case, and an investigator was assigned for
20 about three or four months to make absolutely sure that
21 all the defenses he had raised, and which his attorney
22 had raised, we felt in our own minds had been dealt
23 with.

24 So contrary to the representations that
25 have been made by Dr. Napoli through his counsel, he has

1 sls

2 been aware for the last couple of years that he has been
3 a target. He was given a target warning while he was
4 in the grand jury.

5 Now I'm not aware of any records that are
6 unavailable now that are relevant to this case. His
7 defense, essentially, is that he treated all the patients;
8 that he has a day book; he has entries in the patient
9 records to corroborate this. That evidence is available.
10 It's a matter of credibility.

11 We prefer not to have some 20-odd witnesses,
12 who are extremely nervous about dealing with the Government
13 anyway. They are a mobile population. We started
14 out, I suppose, trying to contact 70 or 80 people, and
15 it kept reducing down; some people couldn't be found;
16 we sent subpoenas, telegrams and everything to find
17 people, and most of them needed interpreters, and most of
18 them were extremely apprehensive about dealing with any
19 Government, especially dealing with Medicaid.

20 I don't think, this being basically a case
21 of credibility, that Dr. Napoli -- I assume he has records
22 against the words of the witnesses on the stand, who are
23 just going to deny they were seen 12 times; most of
24 them will testify essentially they only went once, twice
25 or three times and not 12 or 13 times. I see no reason

1 sls
2 for the defense having an opportunity to go out, or send
3 an investigator out and make tape recordings or take
4 statements that they can feed back to these witnesses
5 at the trial.

6 It is an extremely simple matter for a
7 skilled investigator to lead a witness into saying anything
8 which can be fed back to this witness at trial.

9 I think for that reason, in order to protect
10 these witnesses from being led down the primrose path --
11 we are dealing for the most part with unsophisticated
12 people who are very easily led; we are not dealing with
13 sophisticated, savvy businessmen who know when to keep
14 their mouths shut and know when they are being led by a
15 skillful investigator; and for those reasons I think
16 in the exercise of your discretion that you should deny
17 forcing the Government to disclose the location of the
18 witnesses.

19 We have the invoices, which we will turn
20 over; they know who the people are; they will know
21 clearly from looking at the invoices what Dr. Napoli
22 has claimed to have given them, and I can make a repre-
23 sentation that all these witnesses are going to testify
24 substantially that they received substantially less
25 treatment than was claimed on the invoices. It's as

1 sls

2 simple as that. This is not the kind of case where
3 any real purpose is served by having the defendant's
4 investigators interview a witness except for the purpose
5 of generating impeachment material, which is a very easy
6 matter.

7 THE COURT: What does Cannone say about
8 interviewing for the purpose of generating impeachment
9 material? I haven't read Cannone lately.

10 MR. WILSON: I haven't read it myself lately.
11 I think --

12 THE COURT: There was a revamped opinion,
13 as I recall it.

14 MR. WILSON: I think that the essence of
15 Cannone is that it is in the discretion of the Court.

16 I assessed the current statement of the
17 witness list request, and it is my information that
18 requests for witness lists have been universally turned
19 down by the judges of the court. In the last two
20 cases I had, two before Judge Brieant, and one -- I don't
21 know if it came up before Judge Frankel -- but in two
22 cases we tried before Brieant, he turned down requests
23 for witness lists, and we have not yet given a witness
24 list in this type of case, and based on the fact that
25 this is not the kind of case that it is an essential for

the witnesses to be interviewed.

THE COURT: Do you have a copy of Cannone?

MR. WEISENFELD: Yes.

THE COURT: Let me see it just to refresh my recollection.

MR. WEISENFELD: I think this paragraph there is the relevant portion (indicating).

THE COURT: Is this the revamped opinion?

MR. WEISENFELD: That is the only opinion my clerk came up with. If it is not the revamped one I apologize to the Court.

THE COURT: The Court changed it quite significantly, the Court of Appeals. As soon as the United States Attorneys for the Southern District and the Eastern District filed briefs amicus here for a non banc on this decision, as I recall it, instead of granting a non banc the Court of Appeals toned this down quite a ways, and that is what I would like to see, what they did.

I might ask you, Mr. Wilson, do you have anything that you can show the Court in camera to bear out your statement that these people are of the type that might be easily intimidated or confused?

MR. WILSON: Well, nothing on paper except

1 sls
2 a representation I could make from dealing with hundreds
3 of these people in other cases that most of them are
4 of the lower socioeconomic group that one would expect to
5 find on Medicaid, from the ghetto areas of the city;
6 most of them are - in fact, I would say virtually the
7 majority of them are blacks or Puerto Ricans with very
8 modest education; many don't speak English; and I
9 think by virtue of being in that type of educational
10 socioeconomic group, that it has been our experience that
11 they are, at the very least, very apprehensive of dealing
12 with the authorities. They do not have the sophistication
13 that one would find in people who are not in that type of
14 group.

15 MR. WEISENFELD: May I be heard briefly on
16 that, your Honor?

17 THE COURT: Yes.

18 MR. WEISENFELD: Whatever the nature of these
19 people are, whatever can be inferred from their socio-
20 economic status, that was the same problem that they
21 faced when they were interviewed by Government
22 investigators. In fact, Mr. Wilson has conceded, or at
23 least made the statement, that these people were reluctant
24 to deal with the Government because they were afraid of
25 the Government.

1 s1s

2 Now, it may well be that when these people
3 were called down they were just as subject to being
4 confused, just subject to being led by the Government
5 investigators as they would be by ours, especially since
6 at the time they were called down they may very well
7 have been afraid that they were somehow a target of the
8 investigation.

9 Now, the Government has had its opportunity
10 to speak to these people who are supposedly unsophisticated
11 and afraid of the Government, and I think it's absolutely
12 vital, not so much for impeaching material, but's vital
13 to our defense to know under what circumstances they
14 were interviewed, or did they feel that they were targets
15 of the investigation --

16 THE COURT: But this is all impeaching,
17 isn't it?

18 MR. WEISENFELD: Yes, but I think the basic
19 thrust --

20 THE COURT: Why do you need it other than to
21 impeach?

22 MR. WEISENFELD: The whole case is their
23 recollection. We are not saying that any of these
24 people -- our defense is not that any of these people are
25 lying; they are testifying about events that occurred

four or five years before they were originally --

THE COURT: Yes, but it's impeachment?

MR. WEISENFELD: Yes, it is impeachment.

THE COURT: Impeachment - that their memory is not good; impeachment --

MR. WEISENFELD: And also possibly impeachment in that they were confused at the time they gave statements, aside from their memories not being good.

If I may, your Honor --

MR. WILSON: Well, let me just punctuate that --

THE COURT: Let him finish.

MR. WILSON: I just want to explain -- perhaps I can put it in context. We had an investigator who was assigned to this who was a young girl, not an FBI investigator or postal inspector who, I think, empathized very well with these people; and we also had a translator, both of them women, both the translator and the investigator, and I can't conceive of them being intimidating in any way.

MR. WEISENFELD: I'm not sure that what Mr. Wilson is saying here is that there is a threat of intimidation here. I thought he was speaking more towards that we might get something useful for impeachment

1 sls

2 or that these people might be confused. I didn't
3 hear on the original argument that there was going to
4 be any intimidation --

5 THE COURT: The word "intimidation" was the
6 Court's.

7 MR. WEISENFELD: Because I don't think under
8 the circumstances here, in the light of the nature of the
9 crime, that intimidation is an appropriate word.

10 THE COURT: Not in the sense that they are
11 going to be frightened of being put in danger of their
12 lives, but people of the lower social strata are always
13 intimidated by anyone having or presuming to have
14 authority. They are just not on an equal plane with
15 the investigator or, for that matter, an Assistant United
16 States Attorney or FBI agent or anyone else.

17 MR. WEISENFELD: There are aspects that would
18 not just go to impeachment, that would go to substantive
19 evidence, because in many of these clinics one doctor
20 would treat on behalf of another doctor when he was not
21 there.

22 Now, it would be important for us to interview
23 the people to determine if when they said they only
24 saw Dr. Napoli three times, there may have been three
25 or four times that they saw one of his office associates

1 sls
2 when Dr. Napoli was not in the office, where it was
3 perfectly appropriate for Dr. Napoli to bill because his
4 office associate, in fact, gave the treatment in the
5 spread of Dr. Napoli, and was billed accordingly.

6 MR. WILSON: I can represent that all the
7 people have said -- and they spoke in terms of "I saw a
8 chiropractor" -- and our investigator, who has prepared
9 a couple of other cases by interviewing witnesses of
10 this nature, were very careful to avoid the potential
11 defense of whether or not another podiatrist or another
12 chiropractor, and so on, was seen, and I am just reviewing
13 their summaries here -- and virtually all of them say
14 "I saw a chiropractor twice, three times at most," for
15 example, "Positive I didn't see a chiropractor nine
16 times," and that is really the extent of the interviews,
17 the number of times a person saw a chiropractor, and that
18 type of doctor is very easy to remember because it is an
19 unusual type of help in the medical profession.

20 THE COURT: I think I've heard enough.

21 I don't think that the defense here sustains
22 its burden under Cannone of showing a specific need for
23 the location of these witnesses in order to interview
24 them which outweighs the risk of confusion which in itself
25 would only serve to delay the trial and confuse the

1 sls
2 issues to the jury.

3 I see nothing in anything defense counsel
4 says that he could not effectively bring out on cross-
5 examination without interviewing them beforehand at all,
6 where the witness would be surrounded in a courtroom
7 with the whole panoply of judicial protection from any
8 overreaching, from any overbearing behavior, from any
9 putting of words in his or her mouth that are not the two
10 forms of questioning of a witness. There, where the
11 Court has control of the type of questions that are
12 asked, of the way that they are asked and are the form
13 of questioning, there is no reason why counsel cannot
14 bring any facts that would show that the witness' prior
15 testimony was either the result of confusion, faulty
16 memory or suggestion, overpowering suggestion on the part
17 of the prosecutor or interviewer from the Government.

18 I think we only compound the problem if we
19 allow the converse of that, allowing others to get into
20 the act with the Government. It only lends to delay,
21 to the length of the trial and to confusion of the
22 issues.

23 This is not a case where the Government has
24 concealed the names of the witnesses. You already have
25 them. Surely, Dr. Napoli knows in his heart whether

1 sls

2 or not he overbilled. If he did not the means of
3 proving that he did not, since all those records that
4 the Government has, at least, are available to you, are
5 within his hands and within your hands.

6 MR. WEISENFELD: The only thing is, your Honor,
7 that the Government --

8 THE COURT: I am not debating.

9 MR. WEISENFELD: Okay.

10 May I just make one further offer to the
11 Court which may solve some of the problems that the
12 Court seems to be troubled by.

13 I would be willing to state for the record
14 that if the witness list were to be granted, that every
15 interview with every witness that we could reach would
16 be fully taped and would be presented to the Court prior,
17 and if there is any overreaching or any suggestibility,
18 the Court could then strike or not permit counsel to use
19 that which it felt --

20 THE COURT: I had thought of alternatives,
21 even the alternative of having them appear before a
22 magistrate to take a deposition; I thought of these
23 alternatives and rejected them for myself because I think
24 from my long experience both as a judge and as a trial
25 lawyer I am convinced that it would do nothing but confuse

1 sls
2 the picture and disproportionately to the benefit that
3 you would get.

4 I see nothing that you want to establish that
5 you can't establish better where there is a judge available
6 to compel answers to proper questions.

7 I deny the motion.

8 MR. WILSON: Does your Honor require a
9 response on the other four motions?

10 THE COURT: I haven't seen them. What are
11 they?

12 MR. WILSON: There is one motion to dismiss the
13 indictment on the ground of preindictment delay.

14 THE COURT: What is the delay?

15 MR. WILSON: Well, perhaps Mr. Weisenfeld can
16 state --

17 THE COURT: I will hear your argument on this
18 right now. I will hear argument on whatever motions
19 are outstanding right now.

20 MR. WEISENFELD: The motion involves the
21 fact that the Government interviewed Dr. Napoli -- that
22 Dr. Napoli appeared before the grand jury in January
23 1975, and as Mr. Wilson indicated, one of the major
24 reasons why he was not indicted for so long -- there were
25 two reasons evidently -- one that the Government wanted

1 to give themselves a full and fair opportunity to
2 explore Dr. Napoli's asserted defenses at various confer-
3 ences, but probably, and the more significant reason was
4 that they were preparing cases that they felt were heavier
5 cases, more important cases, people involved in more
6 substantial frauds against the Government.
7

8 Due to the fact that two years passed,
9 especially since they refused to grant a witness list,
10 and that has been sustained by the Court, has made it
11 absolutely impossible, or, at least, at this point we
12 think it will be impossible to locate any of these
13 witnesses.

14 In fact, Dr. Napoli's future depends on whether --
15 whatever happens to him for the rest of his life depends
16 on the recollection of a very small percentage of his
17 patients.

18 As a practicing attorney I can sympathize
19 with how I would feel if my future depended on whether or
20 not a client remembered how many times he came to my
21 office four years ago.

22 This delay in indictment which, at least, in
23 part, at least in substantial part, was because of the
24 convenience, or for the convenience of the Government to
25 allocate its resources as it saw fit, has put Dr. Napoli

1 sls

2 in a position where essential witnesses, the whole case
3 against him, he can no longer find these people, and
4 there is no way he can interview them.

5 We feel it is substantial prejudice, and that
6 it is prejudiced caused in substantial part for the
7 Government's benefit and on their choosing.

8 MR. WILSON: Your Honor, of course, as we know,
9 the standard for preindictment delay was whether there
10 was a purposeful design on the part of the prosecutor
11 to gain an advantage.

12 In this case we started out in --

13 THE COURT: Is that what Finkelstein says?
14 I don't think so.

15 MR. WILSON: I am quoting roughly from Marion,
16 your Honor.

17 THE COURT: Finkelstein, I think, is later.

18 MR. WILSON: Marion is a Supreme Court case,
19 your Honor, which came out in 1971.

20 Cheung Kin Ping, the one that counsel cites,
21 just restates the rule announced or enunciated in Marion.

22 THE COURT: The Second Circuit case is
23 Fin lstein.

24 MR. WILSON: I know there are several of them,
25 I am not aware of that one, but this one which counsel

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1 cites, which I read, is the one that came out on February
2 28 of this year, and that was another case in which
3 there was delay, and the Court found there is no misconduct
4 on the part of the prosecutor, a purposeful design to
5 obtain an advantage against the defendant by waiting
6 until all his witnesses died off or the records were
7 destroyed.
8

9 I would just like to put the background of
10 this case in context:

11 Our office got this investigation, the
12 investigation which Dr. Napoli became a part of, in 1973.

13 At that time we started out with 180 targets,
14 which were all the doctors who worked in all the clinics.
15 It took us a year to get a computer run. We retrieved
16 about 40,000 invoices from the City's warehouse, which
17 took weeks and weeks of time. We had no staff. It
18 took a year to get people from HEW. There was only
19 one Assistant United States Attorney assigned to the case.

20 It wasn't until the early fall, that is,
21 October, 1975 -- I came in on the investigation in August --
22 and by October 1975 myself and Joel Rosenthal, who is
23 also an Assistant United States Attorney, reached the
24 point where we had the evidence on what was then the group
25 of -- the list had been reduced to 30 targets. Many of

1 sls
2 the 180 doctors were people moonlighting, and many of
3 them were exonerated, and it was a narrowing process,
4 and that's when we started systematically calling these
5 doctors and confronting them and dealing with attorneys
6 and arranging for pleas, and the case really broke around
7 December when one of the chief co-conspirators agreed to
8 plead and cooperate, and she turned over detailed records
9 she had, and in the last two weeks in December we took
10 something like seven or eight pleas. We literally
11 worked from dawn to midnight just drafting informations.

12 We then turned our attention to the doctors.
13 Now Dr. Napoli was called in at the end of that group
14 not for any particular reason; there was just - well,
15 maybe because his name began with an N, I don't know -
16 and he came in with a defense, and he insisted --

17 THE COURT: When was that?

18 MR. WILSON: I think it was December of 1975,
19 your Honor, and he came in with his attorney, and we had,
20 I think, two conferences with the attorney; represent-
21 ations were made. We put the case in abeyance
22 because we were in the process of indicting five doctors;
23 and Dr. Naptoli and two or three other doctors who also
24 protested their innocence, we had to put them in abeyance
25 and re-investigate and make sure we were on firm ground.

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In the meantime we had five trials, these Medicaid cases. Not all of them went to trial.

At the same time the staff was reduced.

I was down to six people from HEW working on the case, and in February of 1976 we started a spinoff investigation of the Medicaid laboratories in which we subpoenaed records of 22 laboratories in New York City, and that investigation is going at this time, and in May 1976 we impaneled a special grand jury for Medicaid fraud. Since then we have indicted several laboratory operators.

But in the fall of last year I assigned one investigator to the Napoli case and to the Jacobson case, which is a companion case before another judge, and with instructions to settle this once and for all and let's see if the evidence is there or not.

So I don't think there is any evidence based on my representation which suggests that we have held off on Dr. Napoli. Certainly, Dr. Napoli was placed on notice when he was given a target warning in January 1975. If he didn't know then he certainly knew in December of 1975 and January of 1976 that he was being considered for indictment, and we never did contact his attorney to tell him that we had given up the case.

Mr. Fontana was supposed to, and had offered

1
2 to have Dr. Napoli take a lie detector test, which he
3 never did, and, quite frankly, from the spring of 1976
4 on we got so involved in new investigations we didn't get
5 back to Mr. Fontana immediately; so about six months
6 elapsed when we didn't focus our attention on Dr. Napoli,
7 but during that six months we tried four cases, three
8 doctors and a nursing home, and one case went to mistrial
9 and had to be retried, in addition to running the
10 investigation, and we really, I think, did not sit on
11 our rights in the case of Dr. Napoli.

12 I see no records that he has lost. We have
13 his logbook on which he places his chief reliance; we
14 have copies of his invoices, and we have copies of the
15 medical records kept by the clinic.

16 Now, we know of no personal medical records --
17 he claims he had personal medical records -- other than
18 the clinic medical records in which all of the doctors'
19 treatments for the patients were kept.

20 I don't know when he moved, but, certainly,
21 it would not be reasonable if he moved after January 1976
22 for him to destroy anything, because from that point on
23 he was on notice that he was subject to being indicted,
24 and I just don't think there is any basis at all in either
25 law or fact for this motion.

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2 MR. WEISENFELD: I have a somewhat different
3 reading of Marion and the recent case of February 28, 1977.

4 THE COURT: What is the name of the 1977 case?
5 Do you have a copy of it there?

6 MR. WILSON: I have a slip opinion.

7 MR. WEISENFELD: United States versus Cheung Kin
8 Ping, and that's February 28, 1977, Second Circuit.

9 THE COURT: Let me read the case before you
10 start to tell me how you interpret it.

11 Do you have it?

12 MR. WILSON: No, your Honor. I thought I did,
13 but I must have taken it out. I had it tucked in among
14 the motion papers this morning.

15 THE COURT: What's the cite?

16 MR. WILSON: Slip opinion, February 28.

17 THE COURT: Supreme Court?

18 MR. WEISENFELD: Second Circuit, your Honor.

19 MR. WILSON: I have a copy of the slip opinion
20 on my desk, and I can have someone bring it over in five
21 minutes.

22 THE COURT: Maybe I can get it quicker.

23 We will take a short recess.

24 MR. WILSON: Perhaps while you're waiting I can
25 give you a slip opinion by Judge Frankel which may be

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2 dispositive or helpful on one of the other issues,
3 issue 4 in which the defendant claims that because payments
4 were made by New York City Department of Social Services
5 on the Medicaid program, which we will prove is funded
6 50 per cent by the Federal Government, that is not a
7 claim made against the Federal Government.

8 The same motion was made in the Buthorn case,
9 and Judge Frankel in an opinion -- and I don't have a copy
10 of it, but he denied the motion citing some cases, and
11 Judge Brieant also denied the same motion in U. S. against
12 Kavalier.

13 MR. WEISENFELD: In my own motion papers, your
14 Honor, I also cite a Third Circuit case which has
15 apparently held contrary to that position, and a District
16 Court case in the Southern District of California.

17 I do not at this time wish to make any oral
18 argument on that. To be quite frank, I believe all of
19 the existing case law that I have been able to discover
20 runs contrary to the decision, and I really raise the
21 issue strictly to preserve it, since the Supreme Court
22 has not ruled on it, but I think it is clear that the
23 issue has been determined adversely, and not by the
24 Second Circuit yet, but by virtually every Court that
25 has considered it.

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2 MR. WILSON: I believe Judge Wyatt denied a
3 similar motion in the Severino case, Judge, a nursing home
4 case.

5 THE COURT: I will deny that motion.

6 I think this is persuasive after reading
7 Judge Frankel's decision.

8 MR. WEISENFELD: Perhaps rather than take
9 the recess we could go on to some other requests?

10 THE COURT: All right.

11 MR. WEISENFELD: There is a further request
12 to dismiss the indictment on the ground that 18 to 24-
13 year olds have been systematically excluded from both
14 the grand jury and petit jury list, and basically it's a
15 request under Section 28 U.S.C., 1867 F., and Under
16 the authority of Test versus United States, 420 U.S. 28
17 (1975).

18 Said case gives an absolutely unqualified right
19 to inspect such list in order to support such an applica-
20 tion.

21 In other words, in order to facilitate the
22 statutory policy of including 18 to 24-year olds subse-
23 quent to the amendment permitting 18-year olds to vote,
24 this right to inspect the list was given to prospective
25 defendants in order to make sure that there was compliance

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in each particular case with the mandates of the statutes setting up this new jury selection process.

The problem with the basic claim of exclusion of 18 to 24-year olds has been one of the cognizability of the class, and only one case has, in fact, found that 18 to 24-year olds - and I think it was 18 to 30-year olds in that class -- was a cognizable class, and that was United States versus Butera.

I did not fully brief this point because I didn't know whether your Honor would see any merit to it at all, and whether your Honor would wish any further briefing on it.

Furthermore, as to the cognizability of the class, our basic position would be as follows - and I haven't found any cases that have dealt with this particular issue in these terms.

The Courts have said, why 18 to 24-year olds, why is that a cognizable class? And that has been the problem in asserting such claims. However, the definition of how you determine whether a class is cognizable under the Supreme Court test is essentially one of being able to show that a particular group is the subject of unique prejudice, unique identifiable prejudice. With blacks it is not the color of their skin that makes them an

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2 identifiable class; the fact that they are a subject
3 of identifiable and unique prejudice. And with 18 to
4 25 year olds they are, in fact, subject to the same exact
5 type of prejudice. They are excluded from virtually
6 holding any public office every state, every city and
7 every Federal jurisdiction. There are many other
8 disabilities upon their service in community groups; they
9 are excluded basically from participation in the Chamber
10 of Commerce but are put into the Junior Chamber of
11 Commerce.

12 These are all really analogous to the same
13 types of prejudice which were alleged against Mexican
14 Americans, black Americans, all types of minority
15 groups.

16 Now, once Congress passed the statute or once
17 the amendment was passed that all 18-year olds have the
18 right to vote, I don't believe that the societal prejudice
19 against young adults, which is basically a societal
20 prejudice against their maturity in making decisions, is
21 an appropriate basis to have them be underrepresented
22 in a grand jury or petit jury, even if there are statutes,
23 and valid statutes, excluding them from holding public
24 office? -

25 In other words, throughout this country in

1 sls

2 virtually every jurisdiction 18 to 25-year olds are
3 found to be not mature enough to participate in most of
4 the important decisions of our society --

5 THE COURT: Without getting into all the
6 societal arguments, what basis do you have for your
7 premise that they are systematically excluded?

8 MR. WEISENFELD: Your Honor, my understanding
9 of the case law and the statutory scheme is that you must
10 make this allegation in general terms and make a request
11 for discovery of the list so you can particularize if
12 they are excluded.

13 Now, if, in fact, in this particular circuit
14 they have not been excluded, after I get the discovery,
15 then I will withdraw the application, but it's impossible
16 for me to know and make specific terms, and I think the
17 statutory scheme makes it clear that discovery upon a
18 general claim should be granted, and if the facts sustain
19 the claim, the claim can be pursued, but if the facts of
20 the jury list do not sustain it - and it would be
21 strictly a statistical matter - then, in fact, it should
22 be withdrawn, which is exactly what I would do.

23 If there is no underrepresentation or no
24 significant underrepresentation, I have no intention of
25 wasting my time or the Court's time on frivolous motions.

1
2 I really just want to see the list to see if the statutes
3 have been complied with.

4 THE COURT: Any objection to showing him the
5 list?

6 MR. WILSON: Well, your Honor, I don't think
7 we have any choice on the basis of Test, but I would just
8 like to respond.

9 Now, all this may be very fine, the fact
10 that an 18-year old can't join the Chamber of Commerce,
11 but in this District, as your Honor knows, the jury lists
12 are made up from the voting records, and this has been
13 litigated in U. S. versus Guzman, and the opinion came
14 down from the Court of Appeals I think in early 1973,
15 in which -- I am paraphrasing; I haveq't read the
16 opinion for years -- but it raises the same issue.

17 In that case the defendant was a member of a
18 class which was alleged to have been excluded, and, if I
19 recall correctly, the premise of the Court's denial of
20 this theory was that the mere fact that people don't
21 exercise the right to register and vote cannot be said
22 to consitute an invidious discrimination against people
23 of that class.

24 A class itself is underrepresented not because
25 of any invidious discrimination by the Courts but because

1 sls

2 of their own propensity from that age group not to
3 register to vote --

4 THE COURT: I'm just trying to cut through it.

5 What's the objection in letting him go up and
6 see the list?

7 MR. WILSON: I have no objection.

8 THE COURT: Where we go from there is another
9 problem.

10 MR. WILSON: I think this is the kind of motion
11 you can deny now without prejudice to renewing it during
12 or after trial, because it goes to the very jurisdiction
13 and the very basis of the indictment, and it is the kind
14 of motion --

15 THE COURT: I will grant the motion on
16 condition it does not relay the trial.

17 MR. WILSON: Grant the motion to the extent
18 of --

19 THE COURT: To look at the list.

20 MR. WILSON: I have no objection to that.
21 I think under Test you are required to.

22 MR. WEISENFELD: Certainly I am not intending
23 to delay the starting date of the trial in any way.

24 THE COURT: All right, you can look at the
25 list, and then if you want to come back with a motion to

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2 dismiss we will consider that at the time; but at this
3 point it is premature, there being no showing whatever
4 that this class of people is excluded at all, much less
5 for any invidious reason, and I know it has been looked
6 into around here, and it has turned out to be without any
7 basis in fact because the juries are selected by lot
8 from the voting roles.

9 MR. WILSON: Your Honor, the last item is a
10 motion to dismiss all the other counts or all the counts
11 because the jury didn't vote separately on each count.

12 Now, I didn't bother getting the papers --

13 THE COURT: I'm glad you didn't. I deny
14 that one out of hand.

15 MR. WILSON: That leaves us with just the
16 pre-indictment delay motion.

17 THE COURT: I want to read these two cases.

18 MR. WILSON: Shall we take a recess?

19 THE COURT: Yes, we will take a short recess
20 until I get the cases.

21 (Recess.)

22 THE COURT: I just want to get a couple of facts
23 straight:

24 I take it the delay was two years from the
25 start of the investigation to the indictment, is that

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2 right?

3 MR. WILSON: From the time --

4 THE COURT: Can you give me the dates?

5 MR. WILSON: Dr. Napoli's first call before
6 the grand jury was January 1975.

7 THE COURT: When was he indicted?

8 MR. WILSON: Indicted in March 1977.

9 At that time he wasn't a high target. The target warning
10 he was given was given to all the doctors who appeared.

11 THE COURT: I see.

12 MR. WILSON: It wasn't until the fall of
13 1976 that he was considered --

14 THE COURT: That's when the witness rolled
15 over?

16 MR. WILSON: That's right.

17 THE COURT: In the fall of 1976?

18 MR. WILSON: Yes.

19 THE COURT: But he was given a target warning
20 in January 1975?

21 MR. WILSON: Yes.

22 THE COURT: When did he destroy the records?

23 MR. WEISENFELD: He is not sure. He knows
24 it was when he moved.

25 THE COURT: Was it after he went before the

grand jury?

MR. WEISENFELD: My believe is that it was after, but I could be wrong. I could certainly apprise the Court.

THE COURT: Well, if it is of moment - which I don't think it is - he was at all times, I take it, represented by a lawyer?

MR. WEISENFELD: When he went before the grand jury he was not represented by a lawyer.

THE COURT: He had counsel, is that right?

MR. WILSON: Joseph Fontana of 32 Court Street in Brooklyn. Mr. Fontana represented him as early as December, I believe, of 1975 when we first called him in as part of the plea --

THE COURT: He started to plea bargain or discuss plea bargaining?

MR. WILSON: As I described before, we called many doctors in with their attorneys to tell them what the evidence was and what their options were.

THE COURT: And the Government has had possession of these records at all times since?

MR. WILSON: We have had possession of all the records we knew that were relevant to the case. We weren't aware of these other records.

1
2 THE COURT: But the records that you subpoenaed
3 you have had since then?

4 MR. WILSON: As far as I know, your Honor.
5 I don't have the exact list of what we have got, but we
6 have looked at the list of notes, and it appears we do have
7 all the records.

8 MR. WEISENFELD: One small question --

9 THE COURT: Please.

10 And those have been available to the defendant
11 any time he wanted them?

12 MR. WILSON: Yes, for inspection.

13 THE COURT: All right.

14 What did you wish to say?

15 MR. WEISENFELD: They were not subpoenaed.
16 They were voluntarily turned over.

17 THE COURT: Either way.

18 I deny the motion.

19 There is, in my view, no showing of actual
20 prejudice.

21 The mere fact that a witness' recollection
22 may be somewhat hazy which, of course, at this time nobody
23 can tell, is not the kind of actual prejudice required by
24 Marion (See United States against Fogrel, 523 Fed. 2d 86
25 at 87, Second circuit, 1975).

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2 Thus, there is no showing here of actual
3 prejudice; nor is there any suggestion that the Government
4 intentionally delayed filing of the indictment to gain
5 some tactical advantage.

6 It seems to me in the light of this your motion
7 to dismiss for preindictment delay must be denied.

8 Even assuming arguendo that there is actual
9 prejudice, or that you could establish it on the trial, I
10 think dismissal of the indictment would be unwarranted in
11 the light of the Government's justification for the
12 delay. Here the delay in large measure was attribut-
13 able to the defense attempting to prevent an indictment,
14 asserting defenses; efforts to make sure that there was
15 no merit to those efforts and the purported defenses.
16 Whatever records the Government has subpoenaed, which have
17 been available, could have been obtained at any time.
18 Because they were turned over voluntarily by the defendant,
19 there is no reason under the criminal rules why you could
20 not have gotten them if you wanted them, and to the
21 extent that he destroyed his own records, he can hardly
22 hold the Government at fault for that. So he could have
23 found out who these witnesses were at any time during any
24 of this period since January 1975 and found their addresses
25 from his own records, which he certainly must have, and

1 sls

2 the assertion that you can't find them now, it seems to
3 me he is at fault there, not the Government --

4 MR. WEISENFELD: May I just --

5 THE COURT: Please.

6 It seems to me that in large part the delay
7 here is attributable not to any fault of the Government;
8 on the contrary, to its care in determining whether there
9 was any merit to these defenses and to the need for a
10 careful investigation, and the evidence shows that it
11 wasn't until 1977 that it had any evidence against this
12 man.

13 Yet, he was warned in January L 975 that he
14 was a target. So this is not the stuff on which a
15 valid motion to dismiss for preindictment delay can be
16 based on - see United States against Finkelstein, 526 Fed.
17 2d 517 (1975) at 526.

18 MR. WEISENFELD: Really, just to clarify the
19 record, because I may have misinterpreted what Mr. Wilson
20 said, and it has nothing to do with the ultimate dis-
21 position, but I was not aware, and I don't know whether
22 Mr. Wilson was saying that at any time since January
23 1975 that these records were available to Dr. Napoli,
24 or whether they had become available since there's been
25 an indictment.

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2 THE COURT: They could have been obtained
3 under the Federal rules, no problem; anything seized or
4 taken from the defendant. That has been a Federal rule
5 for a long time.

6 MR. WEISENFELD: Prior to criminal action?

7 THE COURT: Yes. I don't see any reason why
8 not. There was never any request for them.

9 MR. WEISENFELD: I understand that.

10 THE COURT: Never any request. Whether or
11 not they could have been obtained by Court order, but
12 certainly if you don't even make any request you can't
13 claim prejudice.

14 All right.

15 MR. WILSON: Thank you.

16 MR. WEISENFELD: See you May 2nd.

17 MR. WILSON: Your Honor, may I have the Buthorn
18 opinion back, or do you want to keep it?

19 THE COURT: No, I don't want to keep it.

20 ---
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TRANSCRIPT OF JURY TRIAL BEFORE HON. LLOYD F. MacMAHON,
D.J. ON MAY 2, 1977 AND MAY 3, 1977

64a

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA :

5 v. :

6 ANTHONY NAPOLI, :

77 Cr 167

7 Defendant. :

8 -----x

9 May 2, 1977 - 10:20 a.m.

10 B e f o r e :

11 HON. LLOYD F. MacMAHON,

12 District Judge
13 and a Jury

14
15 Appearances:

16 ROBERT B. FISKE, JR., Esq.

17 United States Attorney for the
18 Southern District of New York

19 BY: PETER BLOCH, Esq.

20 Assistant United States Attorney

21 JEFFREY WEISENFELD, Esq.

22 Attorney for Defendant
23
24
25

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(In the robing room.)

MR. BLOCH: Your Honor, I would just like to inform the Court that we are not proceeding on counts with respect to five patients.

THE COURT: What?

MR. BLOCH: We are not proceeding on counts with respect to five patients. I will name the counts.

MR. WEISENFELD: I don't have the indictment with me, so could you indicate.

MR. BLOCH: Counts 4 and 24, which relate to Garrie Graham.

THE COURT: Who?

MR. BLOCH: Garrie Graham.

THE COURT: Keep your voice up.

MR. BLOCH: I will, your Honor. Counts 9 and 29, which relate to Milagros Lugo.

Counts 11 and 31, which relate to Shirley Ann Crawford.

Counts 17 and 37, which relate to Ruth Barnes.

Counts 20 and 40, which relate to Isabel Mulero.

THE COURT: A total of ten counts?

MR. BLOCH: That is correct.

Your Honor, secondly, I just want to make sure that we have agreed on this ahead of time: that the

1 wch

3

2 technical aspects as to the perjury case, namely that
3 the witness appeared before the December, 1974, additional
4 grand jury, was sworn in on January 16, 1975, was warned
5 of the penalties of perjury, and he testified to the words
6 that were mentioned in the indictment, will be stipulated
7 to.

8 MR. WEISENFELD: Yes. We have agreed on that.

9 THE COURT: You stipulate that the formalities
10 of the perjury count --

11 MR. BLOCH: The formalities.

12 MR. WEISENFELD: Yes.

13 THE COURT: Are you stipulating to the testimony
14 that was given? Your stipulation is not clear to me.

15 MR. BLOCH: I asked for that stipulation--

16 THE COURT: What are you stipulating to? It is
17 not clear.

18 MR. WEISENFELD: May I state what I would be
19 willing to stipulate to. That it was a regularly constituted
20 grand jury; that Dr. Napoli appeared on the date on the
21 face of the indictment and testified, answered the questions
22 that were asked of him, and that the question and answer
23 that form the basis of this indictment were in fact asked
24 and answered as they are set forth in the grand jury
25 minutes.

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1 THE COURT: Under oath.

2 MR. WEISENFELD: Under oath. It seems to me
3 that covers all the technical aspects of this.

4 THE COURT: All right.

5 MR. BLOCH: Finally, there was some reference
6 in the pre-trial conference before your Honor the last
7 time to Mr. Napoli's willingness to take a lie detector
8 test and I understand on both sides that never came to
9 pass, and I believe, your Honor, that would be inadmissible
10 evidence, even if taken, and there should be no mention
11 of it.
12

13 THE COURT: Of course it should not be mentioned.

14 MR. WEISENFELD: I do not even know that was
15 the case. I have no intention of mentioning anything
16 about that.

17 Now may I ask as to stipulation: As to Dr.
18 Napoli's records or the records of the Lee Avenue Clinic
19 that are in the government's possession and which were
20 taken from either Lee Avenue or from Dr. Napoli, can we
21 get a stipulation that those were records that were kept
22 in the regular course of business, just those that are
23 in the possession of the government?

24 MR. BLOCH: As to Dr. Napoli's records?

25 THE COURT: Why didn't you people take care of

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all these housekeeping details weeks ago?

MR. WEISENFELD: Judge, these records only became available a couple of days ago.

THE COURT: But the government has had them since the conference. Will you stipulate that they are records kept in the regular course of business?

MR. BLOCH: I will not stipulate to their accuracy in any way.

THE COURT: Well, nobody is asking you to stipulate to their accuracy. Is it stipulated that the records are kept in the regular course of business?

MR. BLOCH: That I would stipulate to.

THE COURT: Anything else?

MR. WEISENFELD: And I would also ask whether or not the two documents--the hospital record of Lynette Brown is the only hospital record that is going to be offered pertaining to any of the witnesses that we have not yet received. We discovered material even this morning. Is there any other discovery material?

MR. BLOCH: No, I have given you the full discovery material.

MR. WEISENFELD: May we have a pre-trial ruling as to what other evidence of the people relating to the voucher of Dr. Jacobson. I think the legal issue is

1 with
2 clear and possibly we can settle it now as opposed to
3 waiting for it to arrive at the time of trial. Dr.
4 Jacobson is another chiropractor who has been indicted
5 by the government for the same type of Medicaid fraud.
6 He handed in numerous vouchers. The government has pulled
7 one of his vouchers and is going to offer it in evidence
8 in this trial of Dr. Napoli because some of the dates
9 of Dr. Jacobson's vouchers are for the same days as Dr.
10 Napoli's.

11 I would oppose that on several grounds. First
12 of all, one, there is no conspiracy charged here and there
13 will be no evidence of a conspiracy between Dr. Jacobson
14 and Dr. Napoli, so Dr. Jacobson's invoice has no bearing
15 on Dr. Napoli's case.

16 Secondly, the invoice is not a record kept in
17 the regular course of business. It is made up months after-
18 wards when the treatment is finished and not contemporaneous
19 with the person coming in, so that I think under the hearsay
20 rules and the new Federal Rules of Evidence that this
21 document, this invoice, would not constitute a record kept
22 in the ordinary course of business. It is really a self-
23 serving declaration. It is not admissible against Dr.
24 Napoli because there is no conspiracy charged. It is not
25 admissible as an exception to hearsay. If they want to call

1 wch.

2 Dr. Jacobson as a witness in this case, and if he wants
3 to testify that these people were in to see him on those
4 days, that is a different story, but just to hand in
5 a self-serving invoice made months after the visits were
6 over, I would feel would violate the spirit and the intent
7 of Rule 803 and should not be admitted at this trial,
8 especially -- and this is another ground, if I may -- the
9 statute says that even the record kept in the regular
10 course of business is not admissible if the manner in which
11 it was prepared or taken is unreliable. Here, where
12 the government has indicted Dr. Jacobson for fraud, his
13 invoice cannot be said to be so reliable that it should
14 be evidence against Dr. Napoli.

15 MR. BLOCH: Your Honor, the defendant is per-
16 fectly free to argue, we will even stipulate, that Dr.
17 Jacobson has been indicted. But the one record we intend
18 to introduce is of the same patient on four times he visited--

19 THE COURT: He is not questioning its materiality.
20 He is questioning its competence. So let us address ourselves
21 to that.

22 MR. BLOCH: Your Honor, it is exactly the
23 same as the invoices submitted by Dr. Napoli. They are
24 submitted to the city in order to get payment, they are
25 routinely kept by the city when submitted or by the factor,

1 wch.

2 whichever is the source.

3 THE COURT: If he lays that foundation --
4 how are you going to lay the foundation without the doctor,
5 is the problem.

6 MR. BLOCH: I can lay the foundation, because
7 the record does not come from the doctor; the record comes
8 from the city or from the--

9 THE COURT: How can the city say that this doctor's
10 records were records kept in the regular course of business?

11 MR. BLOCH: These records are kept in the ordinary
12 course of business of the city's records.

13 MR. WEISENFELD: That is after they are prepared
14 and submitted. If there were a question as to the chain of
15 custody after they left Dr. Jacobson, that would satisfy.
16 But just by turning over records that I make to the city
17 does not make them records kept in the ordinary course
18 of business.

19 THE COURT: It makes them records kept in the
20 ordinary course of the city's business.

21 MR. WEISENFELD: But not in the maker's business,
22 and that is the key.

23 THE COURT: Right.

24 MR. BLOCH: Your Honor, the city received two
25 invoices for the same:--

2 THE COURT: The city does not make them records
3 kept in the ordinary course of business here. You have got
4 to show that they are Dr. Jacobson's records kept in the
5 regular course of business, not that they are records kept
6 in the regular course of the city's business. You have
7 to lay the foundation for it.

8 MR. WEISENFELD: As a matter of fact, these
9 vouchers are not made --

10 THE COURT: I don't know whether they are made
11 or they are not made. All I know is that he has got to lay
12 the foundation that they are records kept in the regular
13 course of Dr. Jacobson's business. That is not to say
14 that I agree with your position, that if Dr. Jacobson sent
15 the bill out, that is not a record made in the regular
16 course of business. I don't agree with that at all. But
17 we are not even at that point.

18 Anything else? -

19 MR. BLOCH: No, your Honor.

20 Let us go.

21 MR. WEISENFELD: I apologize, your Honor, I forgot
22 one thing.

23 MR. BLOCH: Your Honor, my record indicates
24 we agreed to stipulate on that. That on April 27, 1977,
25 a list of --

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2 MR. WEISENFELD: Or Dr. Jacobson's?

3 MR. FLOCH: Jacobson record stip.

4 MR. WEISENFELD: I would never have stipulated
5 that. It must be an error. I never saw it. I was apprised
6 of what it was going to be, but I would never have stipulated
7 to the admissibility of those records.

8 THE COURT: I would suggest to the United States
9 Attorney, through the Assistant United States Attorney,
10 that the way you do this is to put the stipulations in
11 writing and have people sign them and then you don't have
12 these rhubarbs.

13 MR. WEISENFELD: One request I had to charge,
14 both on the voir dire of this jury and subsequently when
15 the jury is ready to receive the case is a charge -- and
16 I am sure your Honor will phrase it better than I do --
17 to negative the impact of the adverse publicity that Medicaid
18 has gotten, that the Medicaid program is not on trial here;
19 that while there may have been publicity about abuses, that
20 that should be put out of the jurors' minds throughout
21 the trial and they should try the case solely on the
22 evidence.

23 THE COURT: I would think that properly belongs
24 in the charge and not on the voir dire.

25 MR. WEISENFELD: Well, I am concerned that some

1 wch

2 of these people may have prejudices because of what they
3 read in the papers.

4 THE COURT: I will ask them whether they have
5 any prejudices against doctors and any prejudices against
6 Medicaid.

7 MR. WEISENFELD: On that on the voir dire of the
8 jury, yes, and during the charge to the petit jury, after
9 the panel is selected and the case is over -- I am sorry
10 I did not have it written out -- but the only request
11 I believe I will have is that they should not try what
12 Medicaid has done but solely what is proved in the court
13 today. I think that will be part of the reasonable doubt
14 charge.

15 THE COURT: Submit a request. That is the only
16 way I can rule on that.

17 (In open court)

18 THE COURT: Good morning.

19 THE CLERK: United States of America against
20 Anthony Napoli. Is the government ready?

21 MR. BLOCH: The government is ready, your Honor.

22 THE CLERK: Is the defendant ready?

23 MR. WEISENFELD: Dr. Napoli is ready.

24 THE COURT: Proceed.

25 (A jury of 12 and 2 alternates was selected and
 sworn.)

1 wch

2 THE COURT: All right, Mr. Bloch.

3 MR. BLOCH: May it please the Court, Judge
4 MacMahon, Mr. Weiserfeld, Ms. Kruglack, ladies and gentlemen
5 of the jury:

6 This case involves Medicaid fraud, a systematic
7 pattern by the defendant Anthony Napoli, a chiropractor,
8 to falsely overbill the government for chiropractic services
9 he did not fully perform.

10 My name is Peter Bloch. I am an Assistant
11 United States Attorney. Seated with me at counsel table
12 is Paula Saddler, the auditor with the Department of
13 Health, Education and Welfare. She will be assisting me in
14 the trial of this case.

15 It is my privilege to present this case on
16 behalf of the United States of America.

17 My sole function at this point is to present
18 an outline of the charges against the defendant on trial
19 and of the evidence the government will introduce to prove
20 these charges.

21 In summation I will have an opportunity to
22 demonstrate to you why the proof shows beyond any reasonable
23 doubt the guilt of Anthony Napoli, the defendant on trial.

24 The indictment charges the defendant with a
25 number of counts of submitting false claims against the

1 won.

2 United States and of making false statements or using
3 false documents in a matter within the jurisdiction of the
4 United States.

5 In this case you will hear evidence that the
6 matter which is in the jurisdiction of the United States
7 is the Medicaid program which is administered by the
8 State of New York in accordance with federal law and in
9 accordance with the state plan which is promulgated as
10 required by the state law.

11 The Medicaid program springs from the Federal
12 Medicaid Act which provides, you will hear, a system whereby
13 people with dependent children, aged, blind, disabled
14 people, people who do not have the means to pay the bills
15 themselves, are given these services by government, and
16 you will hear evidence that the federal government pays
17 50 percent of these federally eligible activities, aid to
18 dependent children, disabled people, old people, and so on,
19 and the State of New York pays the other half, sharing
20 that other 50 percent with New York City, that is, 25 percent
21 each.

22 You will hear evidence that when the Medicaid Act
23 was enacted back in 1965, New York State enacted its plan
24 in 1966.

25 Incidentally, all this evidence has been stipulated

1 won.

2 to, and in a few minutes I will read to you that
3 stipulation, when we begin our case, which deals with this
4 technical evidence, and you will see from the stipulation
5 that Mr. Weisenfeld and I have no argument over the Medicaid
6 law, the existence of it.

7 In that stipulation you will learn that New York
8 State promulgated its plan as required by federal law for
9 having some kind of medical assistance program.

10 The Department of Social Services of the State
11 of New York was charged with administering this plan and
12 each individual welfare district, of which there are 56
13 in New York State, of which New York is one, is charged
14 with administering it to the actual patients.

15 You will hear evidence that doctors or, as
16 we call them, providers of Medicaid service, any type
17 of medical person, a medical doctor or a chiropractor such
18 as Dr. Napoli, submit invoices for the services they perform.
19 These invoices are submitted to the City of New York in
20 Manhattan and are paid and you will see the amounts from
21 the invoices are included on monthly reports which are
22 required under state regulations to be made to the State
23 of New York.

24 The State of New York, in turn, is required
25 to consolidate all the monthly reports from all the different

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2 welfare districts and makes a quarterly report to the
3 federal government which, in turn, pays back the State
4 of New York 50 cents on every dollar.

5 From this evidence you may find and you will
6 see that for every dollar claimed by a doctor at the
7 beginning, that entire dollar is reflected in the totals
8 and 50 cents of that is paid back by the federal government
9 out of the federal treasury.

10 The evidence you will hear relates to approxi-
11 mately 15 invoices submitted by Dr. Napoli for chiropractic
12 services in 1972 for working at a medical clinic on 166A
13 Lee Avenue in Brooklyn, New York. On each of these invoices
14 Dr. Napoli claims to have treated a patient between eight
15 and twelve times within the space of one or two months.
16 Each of the patients who were named on the invoices will
17 testify before you. Each will tell you that she did not visit
18 the chiropractor at Lee Avenue on as many occasions as
19 Dr. Napoli billed in so short a time period. In most
20 cases they will testify they have not seen chiropractors
21 that many times in their entire life. In short, Dr. Napoli
22 billed for visits that never took place.

23 . Further, it will be stipulated that under oath,
24 in January, 1975, that Dr. Napoli testified before a
25 grand jury and stated before that grand jury that he never

1 won.
2 billed in excess of the number of visits he actually ad-
3 ministered. The testimony of his patients will show you
4 that by saying this the defendant Anthony Napoli was guilty
5 of false declarations or perjury, the final charge in the
6 indictment.

7 Let me be clear that the government does not
8 claim -- and there may have been some confusion when the
9 Court spoke to you at the beginning -- that in the present
10 case most or all of the patients, that with respect to them,
11 that Dr. Napoli never saw these patients. That is not our
12 basic claim. Our basic claim is that Dr. Napoli filled for
13 far more visits from the patient than were actually provided.

14 The issue in this case will boil down to the
15 credibility of the witnesses. You will hear a lot about
16 the witnesses' ability to remember, and they may not remember
17 many details that occurred four or five years ago. All the
18 invoices relate to the year 1972. You will have to decide
19 in accordance with the instructions given to you by Judge
20 MacMahon if all of these 15 people, albeit poor and not
21 highly educated, are lying or mistaken when they say they
22 did not go to the chiropractor eight times or ten times
23 or twelve times, to the Lee Avenue chiropractor..

24 As Judge MacMahon has told you, the indictment
25 in this case is not evidence. And his Honor will also tell

1 wch.

2 you that what I say now and what I might say later is also
3 not evidence. The evidence will come from the witnesses,
4 the exhibits and stipulations.

5 It is your duty, ladies and gentlemen, to decide
6 the guilt or innocence of this defendant solely on the
7 evidence, using your normal common sense. If you decide
8 this case on the evidence without fear, sympathy or prejudice
9 justice will be done and that is what each and every one
10 of us is here for.

11 The government's burden of proof in this case
12 is to prove the defendant's guilt on each charge by
13 credible evidence beyond a reasonable doubt. We shoulder
14 that burden willingly and I am confident that once all
15 the proof is in, we will have satisfied that burden and
16 convinced you of the guilt of this defendant beyond any
17 reasonable doubt. Thank you very much.

18 THE COURT: Mr. Weisenfeld?

19 MR. WEISENFELD: Good morning. My name is
20 Jeffrey Weisenfeld. I represent Tony Napoli.

21 Well, the government has told you basically what
22 its case is going to be, and that is exactly what their
23 case is going to be. They are going to call approximately
24 15 witnesses, who are going to testify about events that
25 happened four and five years ago, certainly four years ago.

won.

The government has put its finger right on the key to this case: the credibility of these witnesses.

Now, when we say credibility, we are not necessarily talking about whether they are lying intentionally. It may be that they just don't remember what happened four and five years ago.

All I will ask you to do in evaluating these witnesses when they take the stand is listen to their answers, listen to their answers in analogous areas, listen to their recollections about what they do with other document what they can remember.

But, more important than that, 15 witnesses sounds like an awful lot. 15 people are going to parade before you, and I assume that on direct testimony, when the government asks these questions of them, they are going to say that Dr. Napoli saw them fewer times than Dr. Napoli billed for. It sounds like a lot of people -- 15.

But Dr. Napoli is going to take the stand in his own behalf in this case. You are going to hear that the 15 people represent one-tenth of 1 percent of his practice.

So I urge you to look at the context in which this abstract number 15 comes. It does not represent 15 people out of 15. It represents 15 people out of 1,500.

What I would ask you to do is to put aside the

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2 quantity of the evidence. The system under which we work
3 goes to the quality of the evidence. Don't be impressed
4 by 15 people if those 15 people do not impress you in-
5 dividually as to their ability to recall what happened. I
6 urge you, when you listen to them, to use your common ex-
7 perience and your common sense as to whether or not you would
8 rely on that type of memory, of those types of events, in
9 your own personal important affairs -- which is the test
10 for reasonable doubt in this district.

11 As I said, unless I choose otherwise, Dr. Napoli
12 will be testifying in his own behalf. I ask you to use
13 the same standards as to them as you would to any other
14 witness. Does what he say make sense? Is it cogent?
15 Does he seem to be an honest person from his answers?

16 Surprisingly enough, I have reached the opposite
17 conclusion from the government. I think that after all
18 the evidence is in, in this case, and after you have
19 evaluated it, you will not just find a reasonable doubt,
20 you will find Dr. Napoli innocent.

21 You know, there is no verdict of innocent in
22 this country. There is one in Scotland, where we say
23 not guilty or not proved. This will be a case where you
24 would find not guilty, not merely not proved.

25 I ask you to listen very attentively. There may

1 won.
2 be some very small things. There may be some things that
3 don't seem to have particular impact by themselves. I
4 assure you I am not here to waste your time by asking
5 a lot of silly questions. I am asking them because I think
6 they are important. So listen to all of the answers. When
7 you have all of the evidence, think about it long and hard,
8 use your common sense. I am sure that you are going to acquit
9 Dr. Napoli.

10 Thank you very much.

11 THE COURT: All right.

12 MR. BLOCH: The government calls Louise Cherry.

13 MR. WEISENFELD: Your Honor, may I approach the
14 bench for about ten seconds with counsel?

15 THE COURT: All right.

16 (At the bench)

17 MR. WEISENFELD: Actually, I apologize, but I
18 would like to order daily copy on this. We will be paying
19 for it.

20 THE COURT: Let us see if we can run this without
21 bench conferences. They are unnecessary.

22 MR. BLOCH: Your Honor, with respect to the invoice
23 that they are talking about, all the government wants to
24 prove is that the city received claims by two people for
25 the same --

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2 THE COURT: I don't care what you want to prove.
3 It has to be competent evidence, that is all. Let us proceed.
4 Give me a brief if you think it is competent.

5 (In open court)

6
7 L O U I S E C H E R R Y, residing at 101 Nostrand
8 Avenue, Brooklyn, N.Y., called as a witness by the
9 government, being first duly sworn, testified as
10 follows:

11 THE COURT: We will take a short recess. You can
12 follow the clerk into that jury room there.
13 (Recess)
14 Proceed, Mr. Bloch.

15 MR. BLOCH: Your Honor, at this time the government
16 offers Exhibits 21, 1, 2, 3, 5, 7, 8, 10, 12, 13, 14, 15,
17 16, 18 and 19.

18 THE COURT: Any objection?

19 MR. WEISENFELD: No objection.

20 THE COURT: Received.

21 (Government's Exhibits 21, 1, 2, 3, 5, 7, 8, 10,
22 12, 13, 14, 15, 16, 18 and 19 received in evidence.)

23 THE COURT: Proceed with your examination.

24 MR. BLOCH: Your Honor, I was going to read
25 from the stimulation.

THE COURT: All right.

xx

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Cherry-direct

22

(Government's Exhibit 21 was read to the jury.)

DIRECT EXAMINATION

BY MR. BLOCH:

Q Is it Miss or Mrs. Cherry?

A Miss.

THE COURT: Keep your voice up, please, so everybody can hear you.

A Miss.

Q Where do you live?

A 101 Nostrand Avenue.

Q During 1972 were you on Medicaid?

A Yes.

Q Do you know what your Medicaid number is?

A That I don't have with me.

Q Do you have something to --

A It is in my pocketbook.

Q Do you have that with you?

A Yes. It is not with me. It is in the --

THE COURT: Are you Miss Cherry?

THE WITNESS: Cherry.

Q Miss Cherry, I show you Government Exhibit 7 in evidence and ask you if you see your Medicaid number on Government Exhibit 7.

A Yes.

1 wch
2 Q What is that number?

3 THE COURT: Please, have the witness keep her
4 voice up. Nobody can hear what is going on.

5 MR. WEISENFELD: Excuse me, your Honor. May
6 the record reflect whether this witness is refreshing
7 her recollection or reading from this exhibit?

8 THE COURT: I don't know what she is doing.

9 Q Can you answer the question?

10 THE COURT: What is the question? I could not
11 hear the question, because you are mumbling, and so is
12 she. What is the question?

13 Q The question is, what is your Medicaid number?

14 THE COURT: Do you know what your Medicaid number
15 is?

16 THE WITNESS: No, not right offhand.

17 THE COURT: You cannot remember it?

18 THE WITNESS: No. _

19 THE COURT: Does that help you refresh your
20 recollection?

21 THE WITNESS: This is the number here.

22 Q What is that number?

23 A It is 404547-1.

24 Q Has that always been your Medicaid number?

25 A Yes.

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Cherry-direct

24

1 Q Have you lent your card to anybody?

2 A No.

3 Q How often do you get a new Medicaid card?

4 A Once a month.

5 Q Will you please keep your voice up?

6 A Once a month.

7 Q Did there come a time when you saw a chiropractor?

8 A Yes.

9 Q When was that?

10 A That was on -- in June. June, 1972.

11 Q Where did you see him?

12 A 166A Lee Avenue.

13 Q For what reason did you see him?

14 A For a pain in my back.

15 Q What if anything happened when you did see him?

16 A What?

17 Q What if anything happened when you did see the

r2 18 chiropractor?

19 A He asked me where did, you know, where was the
20 pain in my back. And I told him where it was. And he
21 examined my back, you know, pressed in it, asked me whether
22 it was here or here. And I told him where it was. And he
23 used a vaporizer -- or a massage, on my back.

24 Q Will you please keep your voice up. Did anything
25

1 wch.

Cherry-direct

2 furthe happen?

3 A Not -- the first -- you know, the first time
4 I went, that is what happened.

5 Q Did you ever return to him?

6 A Yes.

7 Q How many times?

8 A Twice. Twice I returned.

9 Q Two more times after that?

10 A Yes.

11 Q Three in all?

12 A Three in all.

13 Q Why did you not visit him any further?

14 A Because I didn't have the pain in my back any
15 more, and I was, you know, he really didn't work on my back
16 that long, so I didn't go back.

17 Q Prior to the visit had you ever been to a
18 chiropractor?

19 A No.

20 Q After those three visits in 1972, did you ever
21 visit a chiropractor again?

22 A No.

23 Q Now I show you Government Exhibit 7 and ask you
24 if this is your name and Medicaid number.

25 A Yes, that is the Medicaid number.

Ref: CH-07-direct

2E

5303

C The Medicaid number reads 2-404547.

I ask you to look at that invoice. Did you visit between May 31, 1972, and July 5, 1972, did you visit a chiropractor at Lee Avenue ten times?

THE COURT: I am sorry, we cannot hear you when you turn your back, as to the witness and as to the court.

Q I ask you again, between May 31, 1972, and July 3, 1972, did you visit a chiropractor at Lee Avenue ten times?

A I did not visit him May and not in July, I did not visit him.

Q Did you visit a chiropractor at Lee Avenue ten times?

A No.

Q Did you ever visit a chiropractor three times in one week?

A No.

MR. BLOCH: No further questions.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. WEISENFELD:

Q Is that Miss Cherry?

A That's right.

Q What time, to the best of your recollection,

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Cherry-cross

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1 was the first time that the government contacted you per-
2 taining to this case?

3
4 A I think last year. Last year.

5 Q Do you remember the month?

6 A No, I do not.

7 Q Do you remember how you were contacted?

8 A By telegram -- not a telegram, a tele-letter,
9 telegram, or whatever you call it.

10 Q What did you do as a result of receiving that,
11 either a telegram or tele-letter?

12 A I called the number on it.

13 Q Did you speak to anybody?

14 A Yes.

15 Q Do you remember the names of the people that
16 you spoke to?

17 A No.

18 Q Do you remember whether it was a woman or a man?

19 A It was a woman.

20 Q Do you remember what you told her at that time
21 about how many visits you made to Dr. Napoli?

22 A She asked me did I have a chronic back disease.
23 I told her no.

24 Q What else did she ask, what else did you answer?

25 A What else did I ask her?

was.

Cherry-cross

28

2 Q No. What else did she ask you? Did she say to
3 you, had you been to Dr. Napoli 20 times?

4 A No.

5 Q Excuse me?

6 A I don't know. I don't remember. I don't remember.

7 Q You don't remember. Do you remember if she
8 asked you if you saw Dr. Napoli 10 times?

9 A She asked me did I see, have I been to a back
10 doctor?

11 Q And what did you answer to her?

12 A I told her no, not -- you know, I wanted to know
13 was it now or what she is talking about. She asked me
14 and I told her yes, I had been to one, you know.

15 Q Did you tell the person that was representing
16 the government, did you tell her over the telephone how
17 many times you had seen this back doctor?

18 A How many times?

19 Q Yes.

20 A Yes.

21 Q What did you say to this representative of the
22 government over the phone as to how many times you had
23 seen the back doctor?

24 A About three times.

25 Q Now I show you Government Exhibit 3507A, which is

1 wch

Cherry-cross

2 an extract of your telephone interview, and I ask you to
3 read it.

4 A W nt to Lee Avenue --

5 THE COURT: No, read it to yourself.

6 Q Does that refresh your recollection about how
7 many times you told the government interviewer that you
8 saw the back doctor?

9 A Yes.

10 Q How many times do you now say that you saw the
11 back doctor?

12 A How many times that I said I saw the back doctor?
13 I said it could not be no more than three times.

14 Q So this is wrong when it says that you said that
15 you only saw the chiropractor once?

16 MR. BLOCH: Objection, your Honor.

17 THE COURT: Sustained.

18 Q You did not tell the interviewer for the government
19 that you only saw the back doctor one time? Would you like
20 to look at this again to refresh your recollection?

21 A No. I don't have to look at it again. I know
22 what I said. I did talk to someone on the phone, and
23 they asked me how many times. And I told them it was a long
24 time. And it is hard to remember. And I thought about it.

25 Q After you told the interviewer --

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Cherry-cross

30

1 THE COURT: Then what did you tell him after you
2 thought about it?

3 THE WITNESS: That it was no more than three times.

4 THE COURT: No more than three times.

5 THE WITNESS: That's right.

6 Q Between the time that you said to the interviewer
7 that it was difficult to remember because it was a long
8 time ago, did the interviewer say anything to you about
9 the number of times that Dr. Napoli billed for your back
10 visit?

11 A Yes.

12 Q How many times did they say, that is, did the
13 interviewer say to you, "You didn't see him ten times,
14 did you?" Did they say something like that?

15 A If I did see him ten times.

16 Q So they were the ones who brought up the number ten
17 is that correct?

18 A Yes.

19 Q And it was only after that that you said, "Oh,
20 it couldn't be more than three times"?

21 A No, I did not say after that. I remembered
22 how many times I seen him.

23 Q How many times did you visit the Lee Avenue Clinic
24 for other than chiropractic services in 1972?
25

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- 1 A I don't know.
- 2 Q Do you know how many times you saw Dr. Alizadeh?
- 3 A No, I do not.
- 4 Q Do you know how many times you saw Dr. Sabal?
- 5 A Who?
- 6 Q Sabal, S-a-b-a-l.
- 7 A I don't know.
- 8 Q And Dr. Kashaoi?
- 9 A Dr. Kashaoi I have not seen. I don't know that
- 10 doctor.
- 11 Q Were you ever X-rayed?
- 12 A Yes.
- 13 Q By whom?
- 14 A The one that does the X-rays.
- 15 Q Were you X-rayed because Dr. Napoli requested
- 16 the X-ray for you?
- 17 A I don't remember.
- 18 Q Do you remember Dr. Mizray, the doctor who
- 19 performed the X-rays on you?
- 20 A Who?
- 21 Q Dr. Mizray. Maybe this will refresh your recol-
- 22 lection. Is that your name on it? Is that your Medicaid
- 23 number? Whose doctor's name appears as requesting that--
- 24 MR. BLOCH: Objection. It is not in evidence.
- 25

1 wch.

Cherry-cross

32

2 Q Does that refresh your recollection?

3 A I still don't know the doctor you are talking
4 about.5 Q Did there come a time in the last week that
6 you were interviewed by an investigator from my office
7 named John McNally?

8 A Yes, he came to my house.

9 Q Do you see him in court?

10 A Yes.

11 Q Did you tell Mr. McNally during the interview
12 with him that you did not recall the number of visits that
13 you made to Dr. Napoli?14 A He asked me was it 10, 20 or 50 times. I told
15 him no.16 Q Did you tell him that you could not remember how
17 many visits, that it was a long time ago?

18 A I don't remember saying that.

19 Q You what?

20 A I don't remember saying that to him.

21 Q What if I were to inform you that that conversation
22 was tape-recorded, would that help your recollection?23 A If it was tape-recorded, it could. I didn't say
24 I didn't say it. I said I don't remember saying it.

25 Q But you could have told him that you really don't

Woh.

Cherry-cross

33

1 remember how many visits you made to Dr. Napoli, is that
2 correct?

3
4 A That's right.

5 Q When were you interviewed by the government the
6 last time before you have taken the stand? When did you speak
7 to anybody from the government?

8 A Today.

9 Q What was said? What was said to you about your
10 testimony?

11 A Tell the truth.

12 Q Anything else? Just tell the truth? Did they show
13 you the invoice?

14 A What do you mean by invoice?

15 Q The piece of paper that was shown to you there
16 with your Medicaid number on it.

17 A Yes.

18 Q That was shown to you. Did you have any discussion
19 with the U.S. Attorney, Mr. Bloch, about that invoice?

20 A I did not talk to him.

21 Q Did you talk to anybody in preparation for being
22 on trial today?

23 A Yes.

24 Q What did they say to you about the invoice?

25 A They just asked me, was that my Medicaid number,

1 wch Cherry-cross
2 redirect
3 and my name, was that my name or not.

4 Q You stated that you don't remember how many
5 times you went to the clinic in 1972, is that correct?

6 A That's right.

7 Q Could it have been 50 times?

8 A What, to the clinic?

9 Q Yes.

10 A It could have been. I don't know. That was in '72.

11 Q What is the date on that invoice?

12 A 1972.

13 MR. WEISENFELD: I have no further questions of
14 this witness. Your Honor, at this time, though -- withdrawn.

15 THE COURT: Any redirect?

16 MR. BLOCH: Yes, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. BLOCH:

19 Q Do you visit medical doctors more frequently
20 than you visit chiropractors?

21 A Yes.

22 Q Substantially more?

23 A Yes.

24 Q When you say you remembered that it was three
25 visits that you went, when did you remember that?

A Because I had an operation. I was in the hospital.

1 wch

Cherry-redirect

35

2 And I went back up to the doctor's office instead of going
3 to the clinic. And I told the doctor I had a pain in my
4 back. And he said, "Well, we have a back doctor here. Do
5 you want to see him?"

6 I said, "Yes."

7 Q When did you recall that you made three visits
8 to Dr. Napoli, when did you first recall that?

9 A Because I --

10 Q Not why. When?

11 A When did I what?

12 Q When did you recall there was -- there was
13 some discussion about when you recalled the exact number of
14 visits that you made to Dr. Napoli.

15 A Oh, because I had to go back up to the doctor
16 for a checkup.

17 MR. WEISENFELD: I would object to that as not
18 responsive to the question when, which was the question which
19 was asked.

20 THE COURT: Sustained. Strike that out.

21 Q I am asking you when did you recall that you
22 made three visits to the chiropractor?

23 A I don't understand what you mean.

24 THE COURT: Do you remember when they first
25 called you up, I think you told them you don't remember how

1 Wen Cherry-redirect

36

2 many times, and then you told us you thought about it.

3 THE WITNESS: Yes.

4 THE COURT: After you thought about it, when
5 was it you told them how many times you remember?

6 THE WITNESS: Oh, well, I have -- how I know that
7 I have not been there more than three times is that I have
8 this -- it's a pain I have in the hospital, and it's like
9 I said, I know -- because I knew from, you know, when I
10 first started going there, and after that --

11 THE COURT: See if you can remember when that was.
12 Was it in 1972, and when was it in 1972?

13 THE WITNESS: It was in '72 I had the operation.

14 THE COURT: What month, do you remember?

15 THE WITNESS: It was June 6th.

16 THE COURT: You had the operation?

17 THE WITNESS: Yes.

18 THE COURT: When did you go to Dr. Napoli, before
19 the operation or after?

20 THE WITNESS: No, it was after.

21 THE COURT: How many times did you go?

22 THE WITNESS: I went three times, like I said.

23 THE COURT: During the month of June?

24 THE WITNESS: Yes.

25 THE COURT: Did you go at all in July?

wch

Cherry-redirect

37

1 THE WITNESS: No.

2 THE COURT: Did you go in August?

3 THE WITNESS: No.

4 THE COURT: When did you remember the number
5 of times that you could tell the person about them?

6 THE WITNESS: Because --

7 THE COURT: No, not "Because." When?

8 THE WITNESS: When? When I had to, you know, think
9 about it, right, and I know during the weekday I went to
10 see the other doctor, the next following week I went, and
11 that is when I complained about my back. And then the
12 next following week after that, you know, came to see the
13 doctor again, I seen him. And I went in another time.

14 THE COURT: When did you see that? That is what
15 we are trying to find out. Do you remember when the govern-
16 ment first talked to you?

17 THE WITNESS: Yes.

18 THE COURT: When was that?

19 THE WITNESS: No, I remember it was last year.

20 THE COURT: Last year when?

21 THE WITNESS: I don't know. I don't know the date.
22 I got this letter, whatever it was.

23 THE COURT: When did you remember it was three times?
24 Last year, this year, yesterday, or when, first remembered
25

1 wch. Cherry-redirect

2 that it was three times?

3 THE WITNESS: After I talked to them on the
4 phone.

5 THE COURT: How long after?

6 THE WITNESS: Oh, about a couple of days. I
7 don't know because I was thinking about it.

8 THE COURT: A couple of days?

9 THE WITNESS: Yes.

10 Q So you remembered after your interview with Mrs.
11 Morey?

12 MR. WEISENFELD: I object to that as leading.

13 THE COURT: Overruled. I think you can lead in
14 the circumstances. Go ahead.

15 Q Did you hear the question?

16 A Yes.

17 Q In other words, you remembered it was three
18 times after your interview with Mrs. Morey, is that correct?

19 A After who?

20 Q After the phone conversation with the government
21 agent.

22 A Yes.

23 Q At any time, at any time, did you have any doubt
24 that you did not see the chiropractor ten times?

25 MR. WEISENFELD: I object to that as--

wch

Cherry-redirect
recross

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THE COURT: Sustained.

Q When you spoke on the telephone, did you say that you were positive that you did not see the chiropractor ten times?

A Yes, I said that.

Q Were you sure of that then?

A Yes.

Q And you are sure of that now?

A Yes.

MR. BLOCH: No further questions.

RECROSS-EXAMINATION

BY MR. WEISENFELD:

Q Miss Cherry, let us get back to the conversation that you had with Mr. McNally. Did you say something to him to the effect that you cannot understand how anybody can expect you to remember what happened five years ago? Did you say something like that to him?

A It's possible.

Q Did you also say something to him to the effect that there is no way that you can remember how many visits you made to Dr. Napoli?

A I says no way or I don't remember saying it, I don't remember saying this.

Q Mr. Bloch asked you a question about seeing regular

wch

Cherry-recross

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doctors more frequently than chiropractors. Do you remember that question?

A Yes.

Q Do you remember any times that you made a visit to a chiropractor -- excuse me -- a gynecologist in 1972? How many times did you visit a gynecologist at the Lee Avenue Clinic in 1972?

A I don't know.

Q But you remember a chiropractor but you don't remember a gynecologist, is that correct?

A That's correct.

Q So, of all the doctors you have ever seen, the only one you remember how many times you have ever seen there is Dr. Napoli; is that correct?

A That's correct.

Q What is the name of your present doctor?

A I don't have a doctor.

Q What is the name of the last doctor you saw?

A The last doctor I saw?

Q Yes.

A I don't know.

MR. WEISENFELD: I have no further questions.

THE COURT: You are excused.

(Witness excused)

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Smith-direct

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THE COURT: We will take a short recess.

(Recess)

L I L Y S M I T H, called as a witness by the government,
being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLOCH:

Q Miss Smith, where do you live?

A 174 High Street.

Q How long have you lived at High Street?

A January of this year.

Q Where did you live before that?

A 458 Hegeman..

Q For how long did you live on Hegeman Street?

A Since '64.

Q During 1972 were you on Medicaid?

A Yes.

Q Do you know what your Medicaid number is?

A I will look at it. 2671257-1.

Q Have you always had the same Medicaid number?

A Yes.

Q Have you ever lost your Medicaid card?

A No.

Q Have you ever lent your Medicaid card to anybody

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Smith-direct

42

2 else?

3 A No.

4 Q Do you know someone by the name of Dr. Alizadeh?

5 A Yes.

6 Q How do you know him?

7 A He is my GYN doctor.

8 Q Where did you first meet him?

9 A At 166 Lee Avenue.

10 Q Where is that?

11 A In Brooklyn.

12 Q What kind of building is it?

13 A It is a medical building.

14 Q With a number of doctors?

15 A The number of doctors in the building?

16 Q Does it have a number of doctors?

17 A Yes.

18 Q Do you recall the first time you ever went to
19 166A Lee Avenue?20 A I am not sure about the year, but I do know
21 it was in June.

22 Q How did you come to visit there?

23 A I was sick and my sister and my girlfriend
24 took me to his office.

25 Q What if anything happened on the first visit to

1 Woh.

Smith-direct

2 that office?

3 A I was told I have to see a dentist, a foot doctor,
4 and a chiropractor before I was able to see the GYN doctor.

5 Q Who told you that?

6 A The receptionist.

7 Q Did you intend to see the chiropractor when
8 you went?

9 A Did I do what?

10 Q Intend to see the chiropractor when you went?

11 A No, I didn't.

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Smith-direct

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Q What, if anything, happened on your first visit to the chiropractor?

A Well, he laid me on a couch, like he cracked my back, like.

Q Did he say anything to you?

A He asked me questions, my history, did I have any illness with my back and whatnot.

Q Did he say anything else to you?

A He asked me to stand up straight and told me that I was like lopsided in my back and whatnot.

Q Did you return to see the chiropractor again?

A Yes.

Q When was that?

A I believe it was a week or two later.

Q What happened then?

A He laid me on a couch again and massaged my back with his hands; he didn't do any cracking; I didn't have any cracking sign in it at that time; it was just massage.

Q Did you ever return after that second visit?

A No.

Q Why not?

A I had no need to.

Q Other than the two visits, have you ever seen a chiropractor in your whole life?

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A No.

Q Did you ever see a chiropractor sometimes within the space of one and a half months?

A No.

Q Have you ever used your Medicaid illegally?

A Yes.

Q When was that?

A From August, 1970, to March, 1971.

Q In what sense were you using it illegally?

A I had gotten married and I didn't report it.

Q I show you Government's Exhibit 12 in evidence and I ask, is that your name and Medicaid number on that invoice?

A Yes.

Q Did you visit a chiropractor on the number of visits and the dates that are indicated on the invoice?

A No. I believe it was the first day only or the first two. I'm not very sure about the exact date on the first two, but it was in that month.

Q It was two in that month?

A Yes.

MR. BLOCH: No further questions.

CROSS-EXAMINATION

BY MR. WEISENFELD:

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1 Q You stated you used your Medicaid illegally
2
3 by not reporting you were married?

4 A Yes.

5 Q Did the government say what would happen to you
6 because of that?

7 A No.

8 Q Did you speak to anybody before taking the stand
9 today and tell them that you had used your Medicaid card
10 illegally?

11 A No one other than Mr. Peter Bloch.

12 Q When you told him that, what did Mr. Bloch say
13 to you?

14 A He told me I would have to say that on the stand.

15 Q Did he say anything about prosecuting you for
16 not --

17 THE COURT: Sustained.

18 Go ahead.

19 No.

20 Did he say anything about prosecuting you?

21 MR. BLOCH: I object. The statute of limitations
22 has passed.

23 MR. WEISENFELD: Is Mr. Bloch testifying?

24 MR. BLOCH; Your Honor can take judicial notice
25 of the law, but you may ask it.

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Smith-cross

47

Q Did he say anything about prosecuting you for that?

A No.

Q You stated that you never loaned your Medicaid card to anyone else? Is that correct?

A Yes.

Q Isn't it a fact, though, that you had seen that done on numerous occasions?

A I know that is done.

Q People trade cards?

A Yes.

Q There is no identification on that card as far as a picture, is there?

A There is no picture on your Medicaid card.

Q There is no description of you on the card, is there?

A No.

Q So, in other words, if somebody were using --

THE COURT: Sustained.

MR. WEISENFELD: Withdrawn.

THE COURT: The card speaks for itself.

Q Now, in 1972 can you tell me how many visits you had made to the Lee Avenue Clinic?

A In 1972?

1 Q Can you tell me how many visits in total through
2 1976, excluding 1977, but from 1976 back to the time that
3 you first started to go to Lee Avenue, how many times
4 were you down to the Lee Avenue Clinic?
5

6 A I can't say exactly, but it has been more than
7 ten times.

8 Q And how many times would say of the ten, how
9 many of them occurred in 1972?

10 A In 1972? I can't say exactly, because I was
11 sick in the month of June.

12 Q So you can't say exactly?

13 A I can't say exactly how many times.

14 Q In 1973 can you tell me how many times you went?

15 A Numerous times. I can't say.

16 Q In 1974?

17 A I can't say. I know I saw him in 1974 one time,
18 but I can't say how many other times more than that.

19 Q You just said in 1974 you didn't know how many
20 times you saw him. Whom are you referring to?

21 A My GYN doctor.

22 Q Who is that?

23 A Dr. Alizadeh.

24 Q Did you see Dr. Feder at the clinic five times?

25 A I don't know the name.

1 Q Have you two children?

2 A Yes, Charice and Robert.

3 Q Do they also go to the Lee Avenue Clinic?

4 A I took them there, yes.

5 Q Did they ever have tests performed on them at
6 the Lee Avenue Clinic?

7 A Blood tests.

8 Q When did that occur? What year?

9 A No, I am not very sure about that.

10 Q You stated the name of your gynecologist as
11 Dr. Alizadeh?

12 A Yes.

13 Q Can you tell me specifically how many times
14 you saw Dr. Alizadeh in 1972?

15 A No, I can't.

16 Q Did you see him at all in 1972?

17 A Yes, I did.

18 Q What about 1973?

19 A I can't say how many times.

20 Q What about 1974?

21 A I can't say. I know it was a lot of times I
22 saw him.

23 Q What about 1975?

24 A Maybe about two times in 1975, I think. I'm not
25

mmh

1 A I'm not sure about that, though.

2 Q I show you this document, your medical record--

3 MR. BLOCH: Objection to the description.

4 THE COURT: Sustained.

5
6 Q I show you this document and ask you to look
7 at it.

8 THE COURT: Mark it for identification.

9 (Defendant's Exhibit A marked for identification.)

xx 10 Q I ask you to look at the running dates down here
11 and see if it refreshes your recollection as to whether
12 you saw any doctors at all in the Lee Avenue Clinic in 1975?

13 A No, not really.

14 Q I show you two other documents which I ask
15 to be marked B and C for identification. I ask you to
16 refresh your recollection as to 1975.

17 A Yes.

18 Q I ask you to look at B and C for identification
19 and ask you if that refreshes your recollection as to
20 when your children had hematology tests?

21 A Yes, it was in that month, but I don't know
22 about the date.

23 Q That was 1974?

24 A Yes.

25 Q You don't remember that year, do you?

1
2 A Excuse me?

3 Q You didn't remember that was in 1974, did you?

4 A Yes.

5 Q Yes, you did not remember?

6 A I remember taking my children there in November,
7 1974.

8 Q When I asked you the question before, you
9 couldn't tell me it was in 1974? You couldn't give me
10 an answer? Is that correct? Then I showed you this
11 and now you say 1974.

12 A That is correct.

13 Q When I originally asked you, you could not
14 recall what year your children had blood tests?

15 MR. WEISENFELD: Well, the record speaks for itself.
16 I withdraw the question.

17 (Defendant's Exhibits B, C and D marked

xx 18 for identification.)

19 Q I asked you earlier if you saw a Dr. Feder?

20 A Yes.

21 Q And you said you didn't?

22 A I said I don't know the name.

23 MR. BLOCH: He keeps restating the testimony.

24 THE COURT: Don't restate.

25 Q You don't remember?

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1 A I don't know the name.

2 Q I ask you to look at the date of June 14 and
3 look at the number 79 of the patient list on that day.
4 Go across and take a look at the initial for the doctor
5 that you saw on that day.
6

7 A F.

8 Q Now, look at June 16th, number 72, and see if
9 that refreshes your recollection. It is two days further
10 on.

11 A 1972?

12 Q 1972. Perhaps I can show it to you and save
13 some time. Is that your Medicaid number?

14 A That is my Medicaid number.

15 Q What is the initial for the doctor you saw that
16 day?

17 A F.

18 THE COURT: She is reading from it...

19 MR. WEISENFELD: Don't read; just answer the
20 questions I ask.

21 Q Does that refresh your recollection whether
22 you saw this doctor whose initial is keyed as F?

23 A No.

24 MR. BLOCH: He is reading from the document.

25 THE COURT: Yes. If you wish to read from the

1 MR.

Smith-cross

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2 document, put it in evidence.

3 MR. WEISENFELD: In light of the fact that
4 we have a stipulation all records in the government's
5 possession are records kept in the ordinary course of
6 business, for the purpose of cross-examination I will
7 offer this book as Defendant's Exhibit D in evidence. Is
8 there any objection?

9 MR. BLOCH: No objection.

10 THE COURT: Received.

xx 11 (Defendant's Exhibit D received in evidence.)

12 Q Now, let's turn to June 26th. Take a look at
13 number 119. Is that your name and Medicaid number?

14 A Yes.

15 Q And what is the initial of the doctor you saw
16 that day?

17 A It says F.

18 THE COURT: Did you see the doctor that day?

19 THE WITNESS: Not to my memory, no, I didn't.
20 I saw a chiropractor twice.

21 Q I asked you whether you saw this doctor.

22 A No.

23 Q Look at June 28th, number 115.

24 A It is someone else's name.

25 Q Maybe it is Meyer. I will check. I should

1 have said June 27th -- June 28th, 115.

2 A Yes.

3 Q And what is the initial or that for the doctor
4 you saw or the record shows you saw?

5 A F.

6 Q That still does not refresh your recollection
7 about seeing a doctor on those dates?

8 A No.

9 Q When you come into the office on Lee Avenue
10 don't you see a receptionist out front?

11 A Yes.

12 Q And they log you into a book like that for
13 what doctor you are going to see?

14 A I don't know what they do. I know I give my
15 Medicaid card and that is it.

16 Q What clinic do you presently go to?

17 A I don't go to no specific clinic. If I am sick,
18 I go to Lee Avenue or Kings County.

19 Q Do you remember the name of the last doctor
20 you saw at either of those places?

21 A The last doctor I saw was at Lee Avenue, Dr.
22 Alizadeh.

23 Q He is your gynecologist?

24 A Yes.

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1 MR.

Smith-cross

55

2 redirect

3 Q As I remember, you do not remember how many
4 times you saw him in a given year?

5 A No.

6 MR. WEISENFELD: I have no further questions.

7 REDIRECT EXAMINATION

8 BY MR. BLOCH:

9 Q Was Dr. Alizadeh the first doctor you saw at the
10 Lee Avenue Clinic?

11 A No, he was not.

12 Q Do you know what that F stands for in that book?

13 A No, I don't.

14 MR. BLOCH: No further questions.

15 THE COURT: Any recross?

16 MR. WEISENFELD: Yes.

17 At this I will move into evidence the medical
18 records of Lily Smith, which are Defendants' Exhibit A for
19 identification. They are a copy. The government has no
20 objection. Under the stipulation I would offer them
21 in evidence.

22 MR. BLOCH: There has been no such stipulation.

23 MR. WEISENFELD: May we approach the bench and
24 resolve this?

25 THE COURT: Yes.

(At the bench)

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2 THE COURT: My recollection is there was such
3 a stipulation with respect to the records.

4 MR. BLOCH: That is not true. He called me
5 on the phone and I said that I had found inaccuracies.

6 THE COURT: It is a record in the regular course
7 of business. You stipulated that in my presence.

8 MR. BLOCH: I stipulated to that exhibit, D.

9 THE COURT: Who has the notes of the conference.
10 My recollection is that you did stipulate.

11 MR. BLOCH: The point, your Honor, is that
12 these exhibits are misleading in that they do not have
13 all the doctors.

14 THE COURT: That may be. But I understood your
15 stipulation to be that all the records in your possession
16 were kept in the regular course of business.

17 MR. BLOCH: If that were true that would include
18 Mr. Jacobson's document.

19 THE COURT: No, it would not.

20 MR. BLOCH: That was in our possession.

21 THE COURT: The records of the clinic in your
22 possession. We will get it; we will see what it was.

23 (In open court)

24 THE COURT: The jury can take a short recess.

25 (Recess)

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Smith

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2 (In the robing room)

3 THE COURT: I will ask the reporter to read
4 the stipulation entered into before.

5 (The reporter read as follows:

6 "THE COURT: ...will you stipulate that they
7 are records kept in the regular course of business?8 "MR. BLOCH: I will not stipulate to their
9 accuracy in any way.10 "THE COURT: Well, nobody is asking you to
11 stipulate to their accuracy. Is it stipulated that the
12 records are kept in the regular course of business?

13 "MR. BLOCH: That I would stipulate to.")

14 THE COURT: That is it.
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MR. WEISENFELD: At this time I would offer into evidence Defendant's Exhibit A previously marked for identification only.

MR. BLOCH: No objection.

THE COURT: Received.

xx

(Defendants' Exhibit A received in evidence.)

RE-CROSS EXAMINATION

BY MR. WEISENFELD:

Q Miss Smith, I would ask you to look at the first page of Defendant's Exhibit A. Take a look at the dates that are indicated on the medical records. Aren't those the same dates that I asked you to look up in this book, in the logbook?

A I don't remember all them dates you showed me in the logbook.

Q And those are the same dates on the doctor's records, is that correct? That is June 14th, June 16th, June 19th, June 26th and June 28th?

A Yes. Those dates.

MR. WEISENFELD: I have no further questions of the witness.

MR. BLOCH: No further questions.

THE COURT: You are excused. Next witness.

(Witness excused)

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Gonzalez-direct

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MR. BLOCH: The government calls Angelica Gonzalez.

(The Spanish interpreter was sworn.)

ANGELICA GONZALEZ, called as a witness
by the government, being first duly sworn, testified
as follows through the Spanish interpreter:

DIRECT EXAMINATION

BY MR. BLOCH:

Q Miss Gonzalez, do you speak some English?

A (In English) Yes.

(The balance of the testimony of the witness
was conducted without the services of the Spanish inter-
preter.)

Q What is your native language?

A Spanish.

Q Do you speak that much more fluently than English?

A Yes.

Q Miss Gonzalez, where do you live?

A 1061 Myrtle Avenue.

Q How long have you lived there?

A Five years.

Q Where did you live before that?

A 303 Vernon Avenue.

Q At 333 Vernon Avenue?

A 333 Vernon Avenue.

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Gonzalez-direct

60

1 Q During 1972 you were on Medicaid?

2 A Yes.

3 Q Do you recall your Medicaid number?

4 A 2808857-1.

5 Q Have you always had the same Medicaid number?

6 A Yes.

7 Q Have you lent your Medicaid card to anyone?

8 Have you ever lent your Medicaid card to anyone?

9 A No.

10 Q Have you ever lost your Medicaid card?

11 A Yes.

12 Q What did you do about that?

13 A I went to get a new one.

14 Q During 1972 where did you go for medical treatment?

15 A 166 Lee Avenue.

16 Q Did you ever see a chiropractor?

17 A Yes.

18 Q When was that?

19 A It was 1972, in the summer.

20 Q What was the name of the chiropractor?

21 A Napoli. Napoli. I don't know how to say it.

22 Q How did you come to see him?

23 A I went to see this woman specialist, and the
24 receptionist gave me the name and I went to see him.
25

1 Wch.

Gonzalez-direct

61

2 Q What if anything happened when you saw Dr.
3 Napoli?

4 A As far as I can remember, I remember that I
5 went into the office to see the doctor and he gave me
6 a massage.

7 Q Did you tell him anything else?

8 A No.

9 Q Did you mention anything about headaches?

10 A Not that I remember.

11 Q Did he tell you when to return?

12 A Yes. He gave me an ointment for -- he said
13 in three days come back.

14 Q When if ever did you return?

15 A What?

16 Q When if ever did you return?

17 A I never returned because I never went back.

18 Q For what reason did you not go back?

19 A Because I didn't like the doctor.

20 Q In your whole life before had you been to
21 a chiropractor?

22 A No.

23 Q Have you been to a chiropractor since the
24 one time you saw Dr. Napoli?

25 A No.

WCH

Gonzalez-direct

62

cross

Q I show you Government Exhibit 13. Is that your name and Medicaid number on that invoice?

A Yes.

Q Did you see a chiropractor at Lee Avenue ten times during the period of time indicated on that invoice?

A No.

MR. BLOCH: No further questions.

THE COURT: Did you see Dr. Napoli ten times?

THE WITNESS: No.

CROSS-EXAMINATION

BY MR. WEISENFELD:

Q Is it Miss or Mrs. Gonzalez?

A Mrs. Gonzalez.

Q When was the first time that somebody from the government contacted you pertaining to this case?

A Last Friday.

Q So for the period of time from 1972 to last Friday you had -- no one spoke to you about your chiropractic visits?

A No.

Q Now have you been going to the Lee Avenue Clinic for all of your medical treatment for the last five or six years?

A For the last five years.

Wor.

Gonzalez-cross

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Q Can you tell me how many visits you personally have made to the Lee Avenue Clinic over those five years?

A No.

Q Can you tell me how many you made in 1972?

A 1972?

Q Yes, 1972.

A No.

Q Can you tell me how many times you saw any particular doctor other than Dr. Napoli in 1972?

A No.

Q Can you approximate, can you give me an estimate, of how many times you went to the Lee Avenue Clinic in 1972?

MR. BLOCH: Is this personally or for the family?

Q Personally. Was it less than ten?

A It was more than ten times.

Q Less than 20?

A I don't remember the exact.

Q But you really can't give me an estimate, is that it?

A An estimate? In one year. Let's put it 30 times.

Q How many times would you say that you went in 1971?

A I don't remember. You expect me to give you an estimate?

Q And in 1973?

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2 A Well, when I give you an estimate, let us
3 put it 25. I don't know exactly.

4 Q Now, you have some children, is that correct?

5 A Yes, sir.

6 Q You have a child named Milagros?

7 A Yes.

8 Q Can you tell me when Milagros went to the clinic
9 did you go with -- is it a girl or boy, by the way?

10 A That's a girl.

11 Q Did you go with your girl Milagros or did she
12 go to the clinic alone?

13 A I go with the girl.

14 Q So you were there every time she was there?

15 A Yes.

16 Q Can you tell me how many visits she made to the
17 Lee Avenue Clinic in 1972?

18 A No. I don't remember. There were a lot of times.

19 Q Do you remember how many times your daughter
20 Milagros in your presence went to the Lee Avenue Clinic in
21 1970?

22 A No.

23 Q In 1973?

24 A No.

25 Q In 1974?

Q Or in 1975?

A I don't remember.

Q Do you have a child name Gisela?

A Yes, sir.

Q When Gisela went to the Lee Avenue Clinic did you go with her?

A Yes.

Q Can you tell me how many times Gisela went to the clinic in 1970?

A No.

Q In 1971?

A No.

Q In 1972? In 1973?

A I don't remember, no.

Q Do you have a son named Julian?

A Yes, sir.

Q And when Julian went to the clinic, did you go with him?

A Yes.

Q Can you tell me how many times Julian went to the clinic in 1970?

A In 1970?

Q 1970.

A No.

2 Q 1971?

3 A A lot of times.

4 Q A lot of times in 1971?

5 A Yes.

6 Q What about 1972?

7 A I don't remember.

8 Q 1973?

9 A I don't remember.

10 Q 1974?

11 A No.

12 Q 1975?

13 A I don't remember.

14 Q Do you remember the name of the last doctor
15 who Julian saw at the Lee Avenue Clinic?

16 A Yes, Dr. Hirschfeld.

17 Q What did he do?

18 A What did he do?

19 Q What kind of a doctor is he?

20 A Children's specialist.

21 Q A pediatrician?

22 A Yes.

23 Q Do you know how many times Julian -- did Julian
24 see Dr. Hirschfeld in 1972?

25 A No.

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1 wch.

Gonzalez-cross

67

redirect

2 Q He did not see any pediatricians in 1972.

3 A I don't remember.

4 MR. WEISENFELD: I have no further questions.

5 REDIRECT EXAMINATION

6 BY MR. BLOCH:

7 Q You were asked on direct examination, when
8 you first mentioned how many times you had visited the
9 chiropractor, do you recall having a conversation on the
10 telephone with someone from the government with respect
11 to how many times you saw the chiropractor?

12 A Yes.

13 Q When was that?

14 A I don't remember the date.

15 Q About how long ago was it?

16 A Talking about the first time or was it a year ago?

17 It was a year ago he called me.

18 MR. BLOCH: No further questions.

19 THE COURT: In view of that, do you want to examine
20 further?

21 MR. WEISENFELD: I have no further questions.

22 THE COURT: You are excused.

23 (Witness excused)

24 THE COURT: Next witness.

25 MR. BLOCH: The government calls Regina Smith.

1 Wob.

Smith-direct

68

2 F I G I N A S M I T H, residing at 23 Nostrand Avenue,
3 Brooklyn, N.Y., called as a witness by the government,
4 being first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BLOCH:

7 Q Miss Smith, where do you live?

8 A 23 Nostrand Avenue.

9 Q How long have you lived there?

10 A 15 years.

11 Q Are you Medicaid?

12 A Yes.

13 Q Do you have your own Medicaid number?

14 A Yes.

15 Q What is your Medicaid number?

16 MS. WEISENFELD: May the record indicate that
17 the witness is reaching into her pocketbook for some
18 document to refresh her recollection.

19 THE COURT: Yes. Let the record reflect the
20 witness is reaching into her pocketbook. I don't know.
21 what for.

22 THE WITNESS: My Medicaid card.

23 THE COURT: All right. That is what pocketbooks
24 are for: to reach into.

25 THE WITNESS: You want the number?

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Smith-direct

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Q Yes, please.

A 1657533-2.

Q How long have you had that Medicaid number?

A Five years.

Q Do you have any children?

A Yes.

Q How many?

A One.

Q What is his name?

A Derek.

Q When was he born?

A September 25, 1972.

Q Have you ever lost your Medicaid card?

A Yes.

Q When did you lose your Medicaid card?

A About October.

Q Of what year?

THE COURT: October when, what year?

THE WITNESS: '75.

Q You mean last year or the year before?

A Last year. '76.

Q This is 1977. You mean 1976?

A Yes.

Q So it is October, 1976?

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Smith-direct

70

2 A Yes.

3 Q Did you ever lend a card to anyone?

4 A No.

5 Q Did you ever received medical treatment on
6 Lee Avenue?

7 A Once. On Lee Avenue.

8 Q Where on Lee Avenue?

9 A Between Penn Street.

10 Q Do you remember when the time you were treated
11 on Lee Avenue was?

12 A Excuse me?

13 Q Do you remember when you were treated on Lee
14 Avenue?

15 A No, I don't.

16 Q Do you know the approximate year?

17 A Around --

18 THE COURT: Mr. Bloch, could you keep your voice up?
19 It is difficult to hear you.

20 MR. BLOCH: I will endeavor to do that, your Honor.

21 A I don't remember around what year.

22 Q Did you see a chiropractor at Lee Avenue?

23 A Yes.

24 Q What if anything happened when you saw the
25 chiropractor?

wch.

Smith-direct

71

1 wch.
2 A Excuse me?

3 Q What if anything happened when you saw the
4 chiropractor? Did you hear the question?

5 A I don't understand what you are saying.

6 Q I say, what if anything happened when you saw
7 the chiropractor?

8 THE COURT: What did the chiropractor do when
9 you saw him?

10 THE WITNESS: He gave me a massage for my back.

11 Q When if ever did you see that chiropractor again?

12 A I didn't.

13 Q You only saw him one time, is that correct?

14 A Yes.

15 Q Have you been to Lee Avenue on other occasions?

16 A For myself?

17 Q In general.

18 THE COURT: For any reason.

19 A With my mother.

20 THE COURT: When?

21 THE WITNESS: On numerous visits with my mother.

22 Q How many times have you seen a chiropractor
23 in your entire life?

24 A Once.

25 Q I show you Government Exhibit 15 in evidence. Is

Web

Smith-direct

72

cross

that your name and Medicaid number on that exhibit?

A Yes.

Q Did you see a chiropractor nine times during the summer of 1972?

A No.

Q Were you pregnant at that time?

A Yes.

Q Did you see a chiropractor while you were pregnant?

A No.

MR. BLOCH: No further questions.

CROSS-EXAMINATION

BY MR. WEISENFELD:

Q So did you see any chiropractor during the period of time that you were pregnant?

A Not to my recall, no.

Q So you were not pregnant in June when you saw Dr. Napoli the one time that you admit to, is that correct?

A Excuse me?

THE COURT: Were you pregnant when you saw Dr. Napoli in June of 1972?

THE WITNESS: I don't remember.

Q Where do you get medical treatment now?

A Marcy Clinic.

wch

Smith-cross

73

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2 Q Do you know the names of any of the doctors
3 there?

4 A Dr. Bajit.

5 Q Do you know how many times you have seen him this
6 hear?

7 A About two or three times.

8 Q What about last year, 1976, do you remember
9 how many times you saw that doctor in 1976?

10 A About once.

11 Q At the time that you went to Dr. Napoli, did
12 you have a back problem, a spine problem at that time?

13 MR. BLOCH: I object. There is no testimony she
14 went to Dr. Napoli.

15 THE COURT: I beg your pardon?

16 MR. BLOCH: There is no testimony she went to Dr.
17 Napoli.

18 THE COURT: The testimony is she went to Dr. Napoli
19 once.

20 MR. BLOCH: As I remember it, she went to
21 a chiropractor.

22 THE COURT: A chiropractor.

23 MR. WEISENFELD: I will withdraw the question.

24 Q At the time that you saw the chiropractor at
25 Lee Avenue, didn't you have a back problem?

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Smith-cross

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2 A Yes.

3 Q Did you have headaches?

4 A No.

5 Q Did you go to any place other than the --

6 you mentioned the Marcy Avenue Clinic?

7 A Excuse me?

8 Q You mentioned that you now go to the March
9 Avenue Clinic?

10 A Yes.

11 Q Before the Marcy Avenue Clinic where did you
12 go for medical attention?

13 A Cumberland Hospital.

14 Q And in 1972, were you on Medicaid in 1972?

15 A Yes.

16 Q Where did you go for your medical treatment, in
17 1972?

18 A Downstate Medical University Hospital.

19 Q Do you know how many times in 1972 you went
20 to that hospital?

21 A A lot of times, because I was going for a prenatal.

22 Q But you don't really remember, do you?

23 A Excuse me?

24 Q Do you remember how many times you went?

25 A It was more than ten times.

redirect

Q You stated that you did not, while you lost your Medicaid card at one time, you never gave it to anybody else to use; is that correct?

A Right.

Q But you have seen that done, haven't you?

A Yes.

Q It is frequent and common, isn't it?

A I guess so.

Q But you never did it?

A No.

Q Did you have any relatives?

A Yes.

Q Are all of them on Medicaid?

A No.

Q And you never helped out a relative by letting them use your Medicaid card?

A No.

MR. WEISENFELD: I have no further questions.

REDIRECT EXAMINATION

BY MR. BLOCH:

Q Did a relative use your Medicaid card?

A Yes.

Q Is that the occasion you lost your card?

A Yes.

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MR. BLOCH: No further questions.

THE COURT: You are excused.

MR. WEISENFELD: Just one or two questions.

RETROSS-EXAMINATION

BY MR. WEISENFELD:

Q When Dr. Napoli -- did Dr. Napoli -- or the
chiropractor at Lee Avenue, did he take a case history on
you when you first went there? Did he ask any questions
about your name, address?

MR. BLOCH: Objection. Beyond the scope of the
cross and the redirect.

THE COURT: Yes. But I will allow it, briefly.

A I don't remember that.

MR. WEISENFELD: I have no further questions.

THE COURT: You are excused.

(Witness excused)

THE COURT: We will adjourn now for lunch until
2:15. Don't talk about the case. Don't let anybody talk
about it with you. Be particularly careful around the halls,
the elevators, and in the environment of the courthouse.

(Luncheon recess)

1 mth

Barrentes-direct

77

2 AFTERNOON SESSION

3 2:55 P.M.

4 (Jury in box)

5 THE COURT: You may proceed.

6
7 N Y D I A E A R R E N T E S, a witness called on
8 behalf of the government, being first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BLOCH:

12 Q Mrs. Barrentes, where do you live?

13 A 137 North 9th Street in Brooklyn.

14 Q And how long have you lived there?

15 A Five months.

16 Q Where did you live before that?

17 A 746 Driggs Avenue, Brooklyn.

18 Q How long did you live there?

19 A Eight years.

20 Q During 1962 were you on Medicaid?

21 A Yes.

22 Q Do you know what your Medicaid number is?

23 A Yes, I have it.

24 THE COURT: Is there any real dispute about
25 the Medicaid numbers? Can't we stipulate them and save a

1 half hour?

3 MR. WEISSENFELD: I will stipulate the number
4 is the same Medicaid number on the invoices.

5 Q Have you lost your Medicaid card?

6 A No.

7 Q Have you ever loaned to anyone your Medicaid
8 card?

9 A No.

10 Q Did there come a time, Mrs. Barrentes, when
11 you were hospitalized for a medical problem?

12 A Yes.

13 Q And when was that? When was the last time you
14 were hospitalized?

15 A On December -- the date I don't remember -- of
16 1971, the end of December.

17 Q How long were you in the hospital?

18 A Three days.

19 Q After the hospital stay did you have any further
20 medical treatment?

21 A Yes, at Lee Avenue.

22 Q When did you go to Lee Avenue?

23 A I would say February or around March.

24 Q Of what year?

25 A 1972.

1 Q For what reason did you go there?

2 A It is a problem.

3 Q Did you go to see a particular doctor?

4 A Excuse me?

5 Q Did you go to see a particular doctor?

6 A Yes, Dr. Alizadeh.

7 Q Where on Lee Avenue did you go?

8 A 166 Lee Avenue, the Medical Center.

9 Q When you went to Lee Avenue what happened?

10 A Well, I went to see the woman specialist and
11 I had a physical also.

12 Q Did you see any other doctors?

13 A Yes, I saw the chiropractor.

14 Q Besides him on the same day did you see any other
15 doctors?

16 A The dentist and a foot specialist.

17 Q What, if anything, happened when you went to the
18 chiropractor?

19 A Well, I was also to the chiropractor; he asked
20 me questions as a patient, me as a patient, and I had
21 an X-ray; I had an X-ray besides. Then I had come to him
22 a second time for the result of the X-ray.

23 Q What happened then?

24 A Well, he told me the results and he gave me a
25

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2 massage for the second time. The first time he gave
3 me a massage; the second time he gave me the result of
4 my X-rays; I also had a massage.

5 Q What do you mean by massage?

6 A Well, he lied me down to the bed; then he massaged.

7 Q How many further times did you go to the doctor?

8 A Well, as I remember, it was two.

9 Q Two times total?

10 A If I went a third time, I don't remember the
11 third time. I might have gone the third time. I don't
12 remember.

13 Q Might have you gone more than three times?

14 A No.

15 Q How many other chiropractors have you seen in your
16 life?

17 A None.

18 Q What is the most times you have been to see a
19 chiropractor in your entire life?

20 A Well, one chiropractor I saw. My mind tells
21 me two times.

22 Q I show you Government's Exhibit 2. Is this
23 your name and Medicaid number on it?

24 A No. I did not go eight times.

25 Q Is your name and Medicaid number there?

1 MR.

Barrientes-direct
cross

81

2 THE COURT: Show her the number.

3 THE WITNESS: Yes, my Medicaid number, but I

4 did not go eight times.

5 Q You did not go eight times as listed on this
6 invoice?

7 A No, I did not.

8 MR. BLOCH: Your Honor, may this be marked
9 Government's Exhibit 22.

xx 10 (Government's Exhibit 22 marked for identification.)

11 MR. BLOCH: I offer Government's Exhibit 22
12 in evidence.13 MR. WEISENFELD: No objection to Government's
14 Exhibit 22.

15 THE COURT: Received.

xx 16 (Government's Exhibit 22 received in evidence.)

17 MR. BLOCH: Government's Exhibit 22 indicates
18 that Lydia Barrientes was listed on the records of February 9,
19 1972, and visiting doctor A.

20 No further questions.

21 CROSS-EXAMINATION

22 BY MR. WEISENFELD:

23 Q What was the first time that any representative
24 from the Government contacted you in any way whatsoever?

25 A Excuse me. I don't understand.

1 THE COURT: When did somebody from the government
2 first talk to you about this case?

3 Do you understand?

4 THE WITNESS: Yes.

5 THE COURT: When?

6 THE WITNESS: April 22nd.

7 Q This year?

8 A Yes, this year.

9 Q Was there a telephone interview before then?

10 A Oh, yes.

11 Q When was that?

12 A I would say December.

13 Q December of what year?

14 A 1976.

15 Q And did you call the government at that time
16 or did the government call you?

17 A No, they called me.

18 Q When you picked up the phone, at that time
19 did you know what they were calling about?

20 A Well, actually, as she kept on --

21 Q I'm talking about the time you first picked
22 up the phone.

23 A I didn't know who she was. First I received the
24 call.
25

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1 MR.

Barrantes-cross

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2 Q Please just answer the question. At the time
3 you picked up the phone did you know what they were in-
4 vestigating?

5 A No, not at the moment.

6 Q And at the time that they called did you feel
7 they might be investigating any of your activities?

8 A I don't understand.

9 THE COURT: Were you worried they were going
10 to look into something you might have done? Were you
11 afraid that the government was looking into something
12 you did?

13 THE WITNESS: As I remember, I know I didn't
14 do anything; no, I was not.

15 Q You were not afraid of the government at that
16 time?

17 A Well, at the moment, you see--

18 Q Were you or weren't you?

19 A No, I was not.

20 Q Now, isn't it a fact that when the government
21 called you up that you were worried about it having something
22 to do with your Medicaid problems?

23 MR. BLOCH: Objection. Asked and answered.

24 THE COURT: Sustained.

25 Q Isn't it a fact that you minimized the number of

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Barrientes-cross

84

1 visits to make sure that you did not over-state how many
2 times you saw Dr. Napoli?

3 Are you nodding yes?

4 A I don't hear too well.

5 THE COURT: Do you understand what he is saying?
6 He is saying you told them you didn't go as many times
7 as you really did because you were afraid -- I missed
8 the second part--

9 MR. WEISENFELD: Something in the number
10 of visits that you claimed on your Medicaid card would
11 cause you a problem.

12 THE COURT: Did you claim more visits than you were
13 entitled to?

14 THE WITNESS: To the doctor?

15 THE COURT: This is purely speculative.

16 MR. WEISENFELD: I am going into her state of mind.

17 THE COURT: Even though, do you have any basis for
18 it?

19 MR. WEISENFELD: No, I have no factual basis.

20 THE COURT: I will tell the jury: counsel's
21 questions are not evidence unless the witness agrees
22 with what he says.

23 Q When the government spoke to you were you
24 afraid to state the actual number of visits that you
25

1 mmh
2 made to any chiropractor?

3 A I was not afraid.

4 Q You stated that you never loaned your card to
5 anybody.

6 A I did not lend my card to anyone ever.

7 Q But you are aware that is a common practice,
8 isn't it?

9 THE COURT: Sustained.

10 Q Have you seen that practice done?

11 THE COURT: Sustained. It is not material.

12 Q Mrs. Barrentes, where do you receive medical
13 treatment now?

14 A Now? At Bellevue Hospital.

15 Q In 1976 did you go to Bellevue Hospital?

16 A Yes, I have been going there.

17 Q For how long?

18 A Well, for the past three years I had been going
19 there to the Bellevue Hospital.

20 Q Can you tell me how many visits you made in 1976
21 to Bellevue Hospital?

22 A It has been so many. I don't know the number.
23 I cannot say.

24 Q At about 1975?

25 A I cannot say, either.

1
2 Q What about 1974?

3 A I don't know, because up to date I still go
4 to Bellevue.

5 Q in 1973 did you go some place other than
6 Bellevue for medical treatment?

7 A No, not 1973.

8 Q Where did you go in 1973?

9 A Then I didn't go anywhere.

10 Q You received no medical treatment in the year 1973?

11 A No.

12 Q Not once?

13 A Not once.

14 Q Do you have any children?

15 A Yes, I have two.

16 Q And how old are they?

17 A 13 and 6.

18 Q Have they also been receiving treatment at
19 Bellevue?

20 A Yes, they do.

21 Q What is the 13 year-old child's name?

22 A Benjamin Bonilla.

23 Q Do you go to the hospital when he goes to the
24 hospital?

25 A Yes.

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Barrientes-cross

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Q Can you tell me how many times he visited the hospital in 1976?

A The number I cannot say.

Q In 1975?

A I don't know.

Q 1974?

A Because he has been going there, but I cannot tell you how many times.

Q Do you know the names of the doctors that he has seen?

A Well, he sees Dr. Nevins, a woman doctor, for the chest. I cannot name the others.

Q And the younger child is a girl?

A That is a boy.

Q When that boy goes to Bellevue, do you go with him?

A But very rare. When he gets sick. No treatments for him.

Q But you go with him when he does go?

A Yes.

Q And you say in 1976 he received no treatments?

A Not the little one, not for the younger one.

Q Now, you said that you went to Lee Avenue and you saw a doctor at Lee Avenue.

A Yes.

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Barrentes-cross

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Q What was that for?

A Alizadeh: it is a woman specialist.

Q What is the problem you had at that time?

What was the condition that you went to Dr. Alizadeh for?

A Shall I say it.

THE COURT: What was wrong with you when you went there? Were you sick?

THE WITNESS: Well, there is something with my uterus still, at that time also.

Q Did you suffer from headaches or back pains because of that problem?

A No.

Q What were the symptoms that you had?

A Pains, but not headaches; no headaches.

Q What about pains in the back?

A No.

Q Now, when you went to the chiropractor the first time that you went, approximately how long was the treatment?

A How long with the doctor?

Q I am talking about with the chiropractor? Wasn't it just a few minutes?

A Yes.

Q And even the second time was shorter?

1
2 A Maybe five, ten minutes. ^{redirect}

3 Q You say you also saw a foot doctor? Is that
4 correct?

5 A Yes.

6 Q How many times did you see the foot doctor?

7 A One time.

8 Q Have you a son Gregory?

9 A Yes.

10 Q That is the youngest son?

11 A That is the youngest.

12 Q Can you tell me how many times total you went
13 to the Lee Avenue Clinic for all purposes?

14 A For me and for --

15 Q Just for you, how many times you went to the
16 Lee Avenue clinic for all purposes?

17 A I can't say the number. I'm sorry, but it
18 was not much.

19 MR. WEISENFELD: I have no further questions.

20 REDIRECT EXAMINATION

21 BY MR. BLOCH:

22 Q What type of doctor do you see at Bellevue?

23 A A woman specialist.

24 Q Do you also see a nutritionist for the children?

25 A Yes.

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Barrientes-redirect

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Q Do you see her frequently?

A Excuse me?

Q Do you see her frequently?

A Yes.

Q Is that the reason why you can't recall the
exact number of times?

MR. WEISENFELD: That is objected to.

THE COURT: Sustained.

MR. BLOCH: No further questions.

MR. WEISENFELD: I have no further questions.

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Dias - direct

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MR. BLOCH: The government calls Sara Dias.

XXX

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S A R A D I A S, called as a witness by the

4

government, after having been first duly sworn

5

through the interpreter, testified as follows:

XXX

6

DIRECT EXAMINATION

7

BY MR. BLOCH:

8

Q Mrs. Dias, directing your attention to 1972,

9

where did you live?

10

A 100 Lindon Street.

11

Q Do you still live there?

12

A Yes.

13

Q During 1972, were you on Medicaid?

14

A Yes.

15

A Have you ever lost your Medicaid card?

16

A No.

17

Q Have you ever lent anyone your Medicaid card?

18

A No.

19

Q Did there come a time when you visited a

20

chiropractor?

21

A Yes.

22

Q Do you recall when that was?

23

A When I went to the clinic, to see Dr. Alizadeh.

24

Q Did you see any other doctors at the clinic

25

also?

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A Yes.

Q What kind of doctors?

A I saw Dr. Alizadeh, who is a gynecologist,
and I also saw two other doctors.

Q What kind of doctors?

A General medicine.

Q Any other doctors?

A For the children.

Q A doctor for the children?

A Yes.

Q When you went to see the chiropractor, did
you intend to see him?

A No, sir.

Q Do you know what a chiropractor is?

A Well, now I know, because I was sent over to
him so I could get some massage.

Q What if anything happened when you went to see
the chiropractor?

A Well, he made me some questions, an interview,
and then he gave me some massage.

Q Did you lie down on a table during that
massage?

A The first day, yes.

Q Did you see that chiropractor again?

1 rmjb 3

Dias - direct

2 A He gave me an appointment to see him some other
3 time so I would have some X-rays taken, but I didn't.

4 Q You didn't go back to see him?

5 A No.

6 Q Why not?

7 A Because an idea I had, I didn't need the X-rays
8 and I didn't go up to see him, so I left.

9 Q How many times in your life have you seen a
10 chiropractor?

11 A Only those two times.

12 MR. WEISENFELD: Could I have that last answer
13 read back? I didn't hear that.

14 THE COURT: Read it back, please.

15 (Answer read.)

16 Q What happened the first time?

17 A I went to see him, he asked me some questions
18 and then he gave me the massage and then he told me one
19 side of my body was slightly higher, taller, than the
20 other side.

21 Q What happened on the second visit?

22 A Then he gave me an appointment. So I would
23 go and have my X-rays taken, but I didn't go because I
24 thought it was not necessary.

25 Q Do you recall speaking on the telephone with

rnjb 4

Dias - direct

94

1 Mrs. William Morey, M-o-r-e-y, of the government?

2 A Yes.

3 Q Did you tell her that you saw a chiropractor --

4 MR. WEISENFELD: Objection. Prior consistent
5 statement, your Honor.
6

7 THE COURT: Go ahead.

8 Q Did you tell her you saw a chiropractor only
9 once?

10 A Yes, sir.

11 Q What caused the difference between your state-
12 ment then and your testimony now?

13 A Because whe she called the first time I didn't
14 recall -- when she called me, I didn't recall that I had
15 been there twice. I only remembered that I should have
16 gone the second visit when I had hung up the phone.

17 Q I show you Government's Exhibit 5 in evidence
18 and ask if that is your name and Medicaid number on that
19 exhibit.

20 A Yes, sir.

21 Q Did you visit a chiropractor eleven times within
22 a month and a half, as shown on that exhibit?

23 A No, I am sure I didn't, because I only went.. /
24 that time because I was asked to go and see him and then
25 the second time I didn't go.

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rmjb 5

Dias - cross

MR. BLOCH: No further questions.

XXX

CROSS EXAMINATION

BY MR. WEISENFELD:

A It is Miss or Mrs.?

A Mrs.

Q Mrs. Dias, were you interviewed by a investigator from my office named John McNally?

A Yes.

Q Did you at some point during the conversation with him state that you forget everything fast?

A He may not have understood me well, because I told him my English is not very good and he may have been mistaken with what I said.

Q What did you tell him about your forgetting everything?

A He asked me how many times I had seen a doctor and how many times I had been there, and then I explained to him some things I couldn't remember exactly. He asked me, for example, how many times I had seen Dr. Alizadeh, he asked me if 30 times or 20 or 25, to try to remember, and I told him I couldn't tell him exactly, because I went many times to Dr. Alizadeh and maybe he understood that. my memory was poor, I didn't remember all the times.

Q Did you say anything to Mr. McNally about your

rmjb 6

Dias - cross

96

1 visit to the chiropractor happened three or four years
2 ago and you might not be sure about how many times you
3 saw him?
4

5 A I told him that I wasn't sure how many times
6 about his visits to Dr. Alizadeh, because I went many
7 times, but the chiropractor, I was sure, I am sure, because
8 I had no idea of seeing one.

9 Q When you had the treatment from the chiro-
10 practor, how long did the first treatment take?

11 A About 10, 15 minutes.

12 Q And the second time?

13 A I had no treatment with him. He only gave me
14 some papers and told me to go downstairs to have my X-rays
15 taken and to come back and see him, and I never went back.

16 Q How many visits did you make to the Lee Avenue
17 Clinic for yourself during the period 1972 to 1975?

18 A Many times, several, maybe 15. I am not sure.

19 Q About how many times in 1972?

20 A I cannot tell you for sure, but maybe approxi-
21 mately three, four, maybe five.

22 Q How many times in 1973?

23 A Maybe four, five times also.

24 Q In 1973, did you have any unusual treatment at
25 the clinic, or by Dr. Alizadeh?

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1 rmjb 7

Dias - cross

2 A I went to have an abortion.

3 Q Isn't it a fact that you later found out the
4 money you paid for that abortion did not have to be spent,
5 that you could have gotten an abortion for nothing?

6 MR. BLOCH: Objection to the relevance, your
7 Honor.

8 THE COURT: I couldn't hear the question.

9 (Question read.)

10 THE COURT: I don't know what relevance any
11 of this has, but you are a little late in the objection.
12 Go ahead.

13 A I never thought of that. I know that Medicaid
14 doesn't cover abortion. Dr. Alizadeh told me if I wanted
15 I could go and have the abortion free in the hospital, but
16 I wanted to have it there. I have my own children and I
17 want to go back to my home soon.

18 Q Where do you receive your medical treatment
19 right now?

20 A It is a clinic, Busch Clinic, Central Avenue.

21 Q What type of doctors do you see there?

22 A A gynecologist.

23 Q Any other type of doctor?

24 A No.

25 Q How many times have you seen the gynecologist

rnpjb 8

Dias - cross

98

1
2 there in 1976?

3 A Twice.

4 Q In 1976 twice?

5 A Yes.

6 Q Have the children received any treatment
7 there?

8 A No, sir.

9 Q You stated that you never loaned your Medicaid
10 card to anybody. I ask you if that is true.

11 A Sure, I never give it to anyone.

12 Q Isn't it a fact that you did lend your card to
13 a relative to use who was not under Medicaid?

14 MR. BLOCH: Objection, asked and answered.

15 THE COURT: Go ahead.

16 A No, because I have no relatives near -- near
17 relatives.

18 Q Did you ever borrow anybody else's card to use
19 that card for your medical treatment?

20 MR. BLOCH: Objection.

21 THE COURT: What is the relevance of this?

22 MR. WEISENFELD: It is a potential defense that
23 this is a very common practice, that Medicaid patients use
24 their cards for other people. I can't ask anybody other
25 than these witnesses whether they have done that.

1 rnjt 9

Dias - cross

2 THE COURT: You can ask her whether she has
3 done it, but not whether it is a common practice. You
4 asked and she said no.

5 MR. WEISENFELD: I asked whether she ever bor-
6 rowed anybody else's card.

7 THE COURT: What does that have to do with
8 it?

9 MR. WEISENFELD: It would tend to show a per-
10 son who borrowed a card improperly would be the type of
11 person to lend a card improperly.

12 THE COURT: Credibility?

13 MR. WEISENFELD: Absolutely.

14 THE COURT: All right.

15 A No.

16 MR. WEISENFELD: No further questions.

17 MR. BLOCH: The government offers Exhibit 23
18 for identification into evidence.

19 MR. WEISENFELD: No objection.

20 THE COURT: Received.

21 (Government's Exhibit 23 received in evidence.)

22 THE COURT: Any redirect of this witness?

23 MR. BLOCH: No, your Honor.

24 THE COURT: You are excused.

25 (Witness excused.)

XXX

rnjb

Tolliver - direct

100

1
2 THE COURT: Next witness.

3 MR. BLOCH: The government calls Barbara
4 Tolliver.

XXX 5 B A R B A R A T O L L I V E R, called as a
6 witness by the government, after being first duly
7 sworn, testified as follows:

XXX 8 DIRECT EXAMINATION

9 BY MR. BLOCH:

10 Q Mrs. Tolliver, where do you live?

11 A 30 Avenue V.

12 Q And where is that?

13 A Bensonhurst.

14 Q Brooklyn?

15 A Brooklyn.

16 Q How long have you lived there?

17 A Going on five years.

18 Q Where did you live before that?

19 A I was in the Granada Hotel.

20 Q Before the Granada Hotel, where did you live?

21 A 07 Rutledge Street.

22 Q When did you move to the Granada Hotel?

23 A July, 1972.

24 Q What caused you to move there?

25 A I had a fire.

rmjb

Tolliver - direct

101

Q At your old residence?

A Yes, and they put me in the hotel.

Q During 1972, prior to the fire, where, if anywhere, did you go for medical treatment?

A On Lee Avenue.

Q Do you know where on Lee Avenue?

A On the address, but it is between Penn and Rutledge.

Q Did you ever see a chiropractor at Lee Avenue?

A Yes.

Q When did you visit the chiropractor?

A Around February or March, I am not sure.

Q Of what year?

A '72.

Q What was his name?

A Well, Naples, or Napoli -- Napoli.

Q How did you come to visit him?

A I used to go for allergy shots and I always complained about my back to the receptionist from walking up, told her my back was giving me a lot of trouble. He was just setting up in there and she said, "We have a chiropractor now and why don't you go in and ask him why you are having trouble with your back?"

rmjb

Tolliver - direct

102

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Q What if anything happened when you went in to see him?

A I had X-rays and I went back for him to tell me what was wrong and he told me I have a little arthritis, or something like that -- I don't remember exactly -- and he told me I needed electrical treatments, but when I went he gave me -- when I went back to have the reading, he gave me massage with his hands. He told me when I came back he would have the machine set up.

Q Did you lie on a couch?

A Yes.

Q When, if ever, did you see Dr. Napoli again?

A I didn't go back again.

Q For what reason?

A I just felt uncomfortable haveing a massage like that.

Q Are you saying you didn't enjoy the treatment?

A You know, I didn't have a reason and my blouse was pulled up and I didn't feel comfortable having it done.

Q How many times in your life have you seen a chiropractor?

A That once, just the two times there.

Q When you were visiting the doctor, were you

rmjb

Tolliver - direct

103

1
2 on Medicaid?

3 A Yes.

4 Q Have you always had the same number?

5 A Right.

6 Q Have you ever lost your Medicaid card?

7 A No.

8 Q Have you ever lent anyone your Medicaid card?

9 A No.

10 Q I show you Government's Exhibit 3 in evidence
11 and ask if that is your name and Medicaid number on that
12 invoice.

13 A Yes.

14 Q I ask you if you visited the chiropractor at
15 Lee Avenue, Dr. Napoli, twelve times between March 10,
16 1972 and April 17, 1972.

17 A No.

18 MR. BLOCH: No further questions.

19 CROSS EXAMINATION

20 BY MR. WEISENFELD:

21 Q Mrs. Tolliver, when was the first time anybody
22 from the government contacted you pertaining to this case?

23 A Maybe two months ago -- about two months ago.

24 Q That would be what, early 1977?

25 A Yes.

XXX

rmjb

Tolliver - cross

104

1
2 Q What was that contact, was that by telegram
3 or telephone or --

4 A Phone.

5 Q You received a phone call?

6 A Right.

7 Q You spoke to somebody on the phone?

8 A Yes, a lady.

9 Q At the time that you spoke to this person on
10 the phone, did you have any idea about what this matter
11 pertained to?

12 A No.

13 Q Did you have any feeling that perhaps you
14 were being investigated for some purpose?

15 A No.

16 Q You received medical treatment at Lee Avenue
17 Clinic in 1972?

18 A Right.

19 Q Could you tell me how many visits you made
20 to Lee Avenue in 1972?

21 A Plenty.

22 Q How many is "plenty"?

23 A A lot. I was taking allergy shots three times
24 a week and then I had children going there for allergy
25 shots.

rmjb

Tolliver - cross

105

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Q I am talking about treatments for yourself.

3

A I went there about three times a week for

4

myself.

5

Q For what period of time did you go there three

6

times a week?

7

A From around January to July.

8

Q Did you stop going to the Lee Avenue Clinic

9

in July of 1972?

10

A Yes.

11

Q Where have you been receiving medical treat-

12

ment since then?

13

A I go to Mayflower Medical Center.

14

Q Is that another clinic?

15

A Yes.

16

Q You have been going there since July of 1972?

17

A Right.

18

Q Can you tell me what doctors you visited in 1972

19

at Mayflower Clinic?

20

A Dr. Feder --

21

Q At Mayflower?

22

A No, I am sorry. Dr. Dayon, for allergy, and

23

a Dr. Diedo I had for a while and then I saw Dr. Horn.

24

Q That was in 1972?

25

A No. You are talking about Mayflower --

rmjb

Tolliver - cross

106

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2 Q You said you started to go to Mayflower after
3 you stopped going to Lee and that was in July of 1972?

4 A When I stopped going, yes. I went around
5 September to Mayflower.

6 Q September of 1972?

7 A Yes.

8 Q What doctors did you see at the Mayflower
9 Clinic in September of 1972 to the end of 1972?

10 A The doctors I just told you.

11 Q How many visits did you make during that
12 period of time?

13 A Quite a few.

14 Q And in 1973, would your answer be the same,
15 a lot of visits but you are not sure?

16 A Yes. I am still going.

17 Q In 1974, the same answer?

18 A I didn't hear you.

19 Q In 1974, would your answer be the same, a lot
20 of visits but you don't know exactly how many to each
21 doctor?

22 A No, I have been going to Dr. Dayon for allergy
23 shots and I stopped going for a couple of years because
24 the shots were making me itch more than the allergy was
25 bothering me.

rmjb

Tolliver - cross

107

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2 Q What about the other two doctors you saw in
3 1972?

4 A If I get a cold or sore throat or something,
5 I would go.

6 Q Did you see them again at the Mayflower Clinic
7 after 1972?

8 A I see them now. If I go now, I see one of
9 them.

10 Q How often have you seen those other doctors
11 at Mayflower? I am not talking about the allergies, but
12 how often did you see them in 1976?

13 A I don't know.

14 Q In '75?

15 A I don't know.

16 Q That's the only doctor at the Mayflower Clinic
17 other than the allergist you have seen in the last two
18 years?

19 A Yes.

20 Q You have a child named Robin Tolliver?

21 A Right.

22 Q Can you tell me how many visits Robin made at
23 Lee Avenue Clinic in 1972?

24 A I don't know.

25 Q Did you go with Robin when he went to the

rmjb

Tolliver - cross

108

1 clinic?

2 A I went with her.

3 Q Do you have a child named Sean Tolliver?

4 A Right.

5 Q When he went to the Lee Avenue Clinic, did
6 you go with him?

7 A Yes.

8 Q Can you tell me how many visits he made to the
9 clinic in 1972?

10 A No.

11 Q Do you have a child named Darrel?

12 A Yes.

13 Q When he went to the Lee Avenue Clinic, did you
14 go with him?

15 A Yes.

16 Q How many times did he go to the Lee Avenue
17 Clinic?

18 A I can't tell you.

19 Q Do you have a child named David Tolliver?

20 A Right.

21 Q When he went to the clinic, did you go with
22 him?

23 A Yes.

24 Q Can you tell me how many visits he made in
25

1 rmjb

2 1972?

3 A No, I can't.

4 Q Do you have a child named Kevin Tolliver?

5 A Yes.

6 Q When he went to the Lee Avenue Clinic, did you
7 go with him?

8 A Right.

9 Q Can you tell me how many visits he made to
10 Lee Avenue in 1972?

11 A No, I can't.

12 Q Do you have a husband? Who is Adam Tolliver?

13 A Adam Tolliver is my son-in-law. I had my
14 grandson on my budget at the time that I had him. I
15 kept him two years.

16 Q Did Adam Tolliver make any visits to the Lee
17 Avenue Clinic in 1972?

18 A His name is Derrick. I don't know where
19 Adam comes from.

20 Q I am talking about Adam who was born in 1945.

21 A No, that's my son-in-law.

22 Q Did he make any visits to the Lee Avenue
23 Clinic?

24 A I don't know. He wouldn't use my card.

25 Q You say that you have a child named Derrick?

Tolliver - cross/redirect 110

rmjb

A I was raising my grandson Derrick.

Q Do you know how many visits he made to the Lee Avenue Clinic in 1972?

A No.

Q Have you ever received any treatment for arthritis of any kind by any doctor?

A No.

Q Do you have any back problems?

A Yes.

MR. WEISENFELD: No further questions.

REDIRECT EXAMINATION

BY MR. BLOCH:

Q You named several of your children or all your children, and what type of doctor did they go to in 1972?

A Pediatric.

Q Did they go fairly frequently --

A I took them when they found they had allergies and they went for shots too, so we were going quite often.

MR. BLOCH: No further questions.

RE CROSS EXAMINATION

BY MR. WEISENFELD:

Q Of the visits that your children made -- first of all, did every one of your children have allergies?

1 mjb

Tolliver - recross

111

2 A They have, every last one.

3 Q Other than the visits your children made to
4 the clinic in 1972, would you say that the majority of
5 them were not allergies?

6 A What clinic?

7 Q Lee Avenue, in 1972.

8 A Sometimes. The last part of '72 they went
9 in for allergies, the first part -- in between, if they
10 had a sore throat or a fever or something, I would take
11 them to the pediatrician before the time for allergy shots.12 Q As to any one of your children, can you say
13 how many times in 1972 they saw the allergist?

14 MR. BLOCH: Objection.

15 A I don't know. I can't tell you.

16 Q As to any one of your children, can you tell
17 me how many times they went to a doctor other than an
18 allergist?

19 MR. BLOCH: Objection.

20 THE COURT: I don't see its relevance. Sus-
21 tained.

22 MR. WEISENFELD: No further questions.

23 THE COURT: You are excused.

24 (Witness excused.)

25 THE COURT: We will take a short recess.

(Recess.)

mmh. 1

Allende-direct

T3 pm 2

(Jury in box)

MR. BLOCH: The government calls Ramona Solar

Allende.

RAMONA SOLAR ALLENDE, a witness called
on behalf of the government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. BLOCH:

Q Miss Allende, are you married?

A Divorced.

Q What was your marriage name?

A Solar.

Q Where do you live?

A 945 Fulton Street.

Q Where is that?

A Between Cleveland and Ashford.

Q In what borough?

A Brooklyn.

Q Where did you live in 1972?

A 1203 Myrtle Avenue, Brooklyn.

Q Do you have any children?

A Three.

Q What are their names?

1 mmh.2

Allende-direct

2 A Francisco Solar, Eric Solar and Jessica.

3 Q In 1972 were you on Medicaid?

4 A Yes.

5 Q Do you have a Medicaid number?

6 A Yes.

7 Q Have you lost your Medicaid card ever?

8 A Yes.

9 Q When did you lose the card?

10 A It was either the end of 1975 or the beginning
11 of 1976 that I was pregnant from Jessica.

12 Q You did not lose the card in 1972?

13 A No.

14 Q Have you ever lent your Medicaid card to anyone?

15 A No.

16 Q Directing your attention to about June, 1972,
17 did you have occasion to visit a medical center?

18 A Yes.

19 Q Where was that clinic?

20 A It was somewhere in Brooklyn. I am not sure
21 of the place. And I really went there to get some
22 pregnancy tests done, to the GYN doctor.

23 Q Will you tell the jury what, if anything,
24 happened at the center?

25 A At the center I also saw a chiropractor who

177a

1 mmh.3 Allende-direct
2 massaged me and told me that I have a treatment, but
3 I didn't go back to him.

4 Q For what reason did you not go back?

5 A For what reason I did not go back?

6 Q Yes.

7 A I didn't like going there. First of all, I had
8 to wait long and I figured I was still going to have the
9 pains I always had, because I had seen another doctor
10 and nothing happened; they didn't help me any.

11 Q How many times all told did you visit the
12 chiropractor?

13 A Totally about four times.

14 Q Have you at any time visited any other
15 chiropractor in your life?

16 A No, when I am saying totally, I mean the first
17 time I went to one on Graham Avenue, I went there about
18 three times, and the one I went to at the other office.
19 I can't recall the address. I went there once.

20 Q How many chiropractors have you seen in your life?

21 A In my life? Two.

22 Q Where was the first one located?

23 A In Graham Avenue.

24 Q And how many times did you see him?

25 A About three times.

mmh4

Allende-direct

1
2 Q About how many times did you see the other
3 chiropractor?

4 A Once.

5 Q Was that at the place where you saw the gyne-
6 cologist?

7 A Yes.

8 Q The total in your life you have seen a chiro-
9 practor, once on Graham Avenue and once somewhere else
10 in Brooklyn?

11 A Yes.

12 THE COURT: Save that for your summation. We
13 have heard all the testimony.

14 Q I show you Government's Exhibit 41. Is this your
15 Medicaid number and is that your name on that invoice?

16 A Yes.

17 Q Did you see a chiropractor at 166 Lee Avenue
18 ten times between June 21, 1972, and July 31, 1972?

19 A No, I never did.

20 Q Are you sure of that?

21 A Yes.

22 MR. BLOCH: At this time, your Honor, I would like
23 to read from Defendant's Exhibit D.

24 On June 21, 1972, there is a listing there for
25 Ramona Solar visiting Dr. A and Eric Solar and Francisco

1 mmh5 Allende-direct
2 cross

3 Solar visiting Dr. H.

4 No further questions.

5 CROSS-EXAMINATION

6 BY MR. WEISENFELD:

7 Q On June 21st when you went into the Lee Avenue
8 Clinic for pregnancy, what did your child Eric Solar go in
9 for?

10 A Excuse me. I didn't hear you, the last question.

11 Q Your child, Eric Solar, did he make a visit
12 the same day?

13 A I cannot remember exactly whether I had my
14 children with me or not.

15 Q What about Francisco Solar?

16 A I am speaking about both my children. I can't
17 remember whether I had them with me. I could have had them
18 and could not have had them with me there.

19 Q You stated that you saw some other chiropractor.
20 How long ago was that that you saw this other chiropractor?

21 A I am not sure. I think it was 1972, before
22 I went to this other clinic, months before.

23 Q How many months before?

24 A I don't recall.

25 Q Is it possible that you have confused these
two chiropractors?

1 mmh6 Allende-cross

2 A No, it is not, because I remember the clinic,
3 because I went there for GYN test; that is what reminds
4 me of the clinic. And I saw one chiropractor there only
5 once.

6 Q When were you interviewed by telephone? Can
7 you tell me the date of that?

8 A It was Friday and I was very busy and they called
9 me at the wrong time.

10 Q When you were interviewed, was it a woman who
11 interviewed by telephone?

12 A The first time I was called?

13 Q The first time.

14 A Yes, it was a woman.

15 Q Did you tell her that you might have gone back
16 a second time to this doctor on Lee Avenue?

17 A I went to the clinic a second time to get the
18 results from the pregnancy test, but not to see the
19 chiropractor.

20 Q When was your child born in 1971?

21 A When was he born?

22 Q Yes.

23 A August 30th.

24 Q You stated that you saw a chiropractor some time
25 after the child was born?

1 mmh.7

Allende-cross

2 A He was about ten months; before he started walking.

3 Q Now, when you spoke to this person on the phone
4 did they ask you questions? Did they ask you did you
5 see Dr. Napoli ten times? Did they ask you that question?

6 A I can't remember.

7 Q Where do you receive your medical treatment now?

8 A I take my kids to Broadway, and for myself, the last time
9 I went to -- I don't have the exact address, but there is
10 this doctor on Knickerbocker and Dekalb Avenues.

11 Q Is that a clinic?

12 A It is a clinic.

13 Q In 1976 how many visits did you make to that
14 clinic?

15 A 1976? To Knickerbocker and Dekalb?

16 Q Yes.

17 A None. I just started going there two months ago.

18 Q Where did you go for medical treatment in 1976?

19 A I don't remember.

20 Q What about 1975?

21 A I don't remember. I used to go to 715 Broadway.
22 There is Dr. Rogers there.

23 Q In 1976 did you see any gynecologist?

24 A 1976? If I did, it was at 715 Broadway, yes.

25 Q And how many times would you say that you saw

mmh8

Allende-cross
redirect

a gynecologist in 1976?

A I couldn't tell you exactly; maybe more than four.

Q What about 1975?

A I couldn't tell you.

Q Have you ever seen a podiatrist, that is, a
foot doctor?

A No, I have not.

Q Have you ever seen an allergist?

A No.

Q What doctors have you seen in the last five years
that you can recall?A For myself? What I go usually is to GYN; for
my kids, there is a specialist for vaccinations or whatever,
and if I have any emergencies I take them to the hospital.Q You don't recollect how many visits you made in
any given year to a gynecologist?

A No.

MR. WEISENFELD: I have no further questions.

REDIRECT EXAMINATION

BY MR. BLOCH:

Q What is the birth date of the son who was walking?

A Eric.

Q He was walking when you visited the clinic, the
psychiatrist you visited once?

mmh.9

Allende-redirect

Gonzalez-direct

A He was not walking; he was close to walking.

His birth date was August 30, 1971.

MR. BLOCH: No further questions.

THE COURT: You are excused.

(Witness excused)

MR. BLOCH: The government calls Jessie
Gonzalez.

JESSIE GONZALEZ, a witness called on behalf
of the government, being first duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MR. BLOCH:

Q Miss Gonzalez, where were you living in 1972?

A 513 Sixth Avenue.

Q In 1972 were you on Medicaid?

A Yes.

Q Have you always had the same Medicaid number?

A Yes.

Q Have you ever lost your Medicaid card?

A No.

Q Have you ever lent your Medicaid card to anyone?

A No.

Q During 1972 where did you go for medical

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1 mmh 10

Gonzalez-direct

2 treatment?

3 A To the Lee Avenue Medical Center.

4 Q Do you recall its address?

5 A 166A Lee Avenue.

6 Q Did you ever see a chiropractor there?

7 A Yes.

8 Q Do you recall what year that was?

9 A In 1972.

10 Q What caused you to visit the chiropractor?

11 A I had backaches and my knee and I always used
12 to get headaches.

13 Q I didn't hear the end.

14 THE COURT: He had backaches and her knee and
15 she also got headaches.

16 Q What, if anything, happened when you visited
17 the chiropractor?

18 A I didn't hear.

19 Q What, if anything, happened when you visited
20 the chiropractor?

21 A What happened?

22 THE COURT: What did the chiropractor do?

23 THE WITNESS: Oh, well, he put me on a couch and
24 he gave me massage on my back and he also gave me an Ace
25 bandage.

1 mm.h. 11

Gonzalez-direct

2 Q Did you ever visit the chiropractor after the
3 first time?

4 A Yes, I went back because the Ace bandage was
5 bothering my foot, so I wanted to take it off, so I went
6 back.

7 Q Did you go for any further visits to the chiro-
8 practor on Lee Avenue?

9 A No.

10 Q Before the two visits on Lee Avenue had you
11 ever seen a chiropractor?

12 A No.

13 Q Have you seen a chiropractor since?

14 A Yes, I am going to one now.

15 Q I didn't hear the end of it.

16 A Yes, I am going to one now.

17 Q Since when have you seen one?

18 A It is about two months.

19 Q Other than the two times you mentioned and
20 this chiropractor you have seen in the last two months,
21 have you seen any other chiropractor?

22 A No.

23 Q I show you Government's Exhibit 18 and I ask...
24 you if that is your Medicaid number on Government's
25 Exhibit 18 and whether that is your name on that invoice.

1 mmh 12

Gonzalez-direct
cross

2 A Yes, it is.

3 Q I ask you, did you visit a chiropractor on
4 Lee Avenue ten times in one month as shown in this invoice?

5 A No.

6 MR. BLOCH: No further questions.

7 CROSS-EXAMINATION

8 BY MR. WEISENFELD:

9 Q How many years did you go to the Lee Avenue
10 Clinic?

11 A How many years?

12 Q Yes, as a patient.

13 A Six.

14 Q During the six years approximately how many
15 visits did you make yourself? I am talking about you,
16 not your children. How many visits did you make for yourself
17 to the Lee Avenue Clinic?

18 A Many times.

19 Q Will you tell me how many you made in 1972?

20 A Approximately?

21 Q Approximately.

22 A Many times.

23 Q Can you tell me what doctors you saw at the clinic
24 in 1972?

25 A I saw Dr. Alizadeh. For myself?

1 mmh 13

Gonzalez-cross

2 Q Yes, for yourself.

3 A Just him.

4 Q How many times do you say you saw Dr. Alizadeh
5 in 1972?

6 A Many times.

7 Q Were you X-rayed in 1972 in the clinic?

8 A Yes.

9 Q About when were you X-rayed?

10 A When?

11 Q Approximately when were you X-rayed at the clinic?

12 A I believe it was in 1970 or 1971.

13 Q 1970 or 1971?

14 A Yes.

15 Q Were you X-rayed in 1972?

16 A I don't recall.

17 Q Did Dr. Napoli cause you to have any X-rays at
18 any time?

19 A No.

20 MR. WEISENFELD: I ask that the medical records
21 of Jessie Gonzalez be marked Defendant's Exhibit E.

22 MR. BLOCH: May I look at them?

23 Your Honor, this is an incomplete version.

24 MR. WEISENFELD: Can I use the government's
25 original?

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Gonzalez-cross

MR. BLOCH: No objection.

(Defendant's Exhibit E received in evidence.)

Q Now, am I correct that you testified in 1972 the only doctor who you saw at the Lee Avenue Clinic was Dr. Alizadeh? Is that correct?

A And the chiropractor.

Q Excluding the chiropractor, the only doctor you saw, other than the chiropractor, in 1972 at the Lee Avenue Clinic was Dr. Alizadeh?

A Yes.

Q You don't remember being X-rayed in 1972 by Dr. Napoli? I show you this which is in evidence. It is a report of Louis Milagros, radiologist. I ask you to look at it and see if it refreshes your recollection whether you were X-rayed in 1972 during your treatment by Dr. Napoli.

Do you remember being X-rayed now? You still don't remember ever being X-rayed in 1972?

A I had a X-ray of the chest -- no, I didn't have a spine X-ray.

Q So, in other words, this document is wrong when he says dorsal spine, cervical spine?

A Yes, to my knowledge.

Q Now, on August 19, 1972, did you see a Dr. Feder?

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Gonzalez-cross

2 A Yes.

3 Q You were wrong before when you said the only
4 doctor you saw in 1972 was Dr. Alizadeh?

5 A But that was my son; that was for my son.

6 Q I ask you to take a look at this logbook--

7 MR. WEISENFELD: I offer this logbook as

8 Defendant's Exhibit F.

XX

9 (Defendant's Exhibit F received in evidence.)

10 Q I ask you to look at number 35 in this logbook
11 and tell me if that is your name and Medicaid number.

12 A Yes.

13 Q Take a look at the initial. What is the initial
14 for the doctor?

15 A F.

16 Q Your son's name is not Jessie, is it?

17 A My son's name? No.

18 Q But you never saw a Dr. other than Dr. Alizadeh;
19 is that correct?

20 A Yes.

21 Q Now, your daughter's name is Jessie, Jr.?

22 A Yes.

23 Q Did she make any visits to the Lee Avenue Clinic'
24 in 1972?

25 A Well, I go there for shots for her. She also

mmhl6

Gonzalez-cross

went to ar doctor.

Q When she went to the clinic did you go with her?

A Yes.

Q How many times did she go to the eye doctor?

A Once for the examination and then to pick up
the glasses.

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1 rnr 1 Gonzalez-cross
2 Q How many times did she see a pediatrician in
3 1972?
4 A Oh, she gets asthma many times.
5 Q Do you remember the pediatrician's name?
6 A Dr. Feder, and also Usefina.
7 Q Did she also see a doctor named Hirschfield?
8 A Yes.
9 Q How many times did she see those doctors in
10 1972?
11 A I couldn't tell you.
12 Q Do you have a child named Wilfred Gonzalez?
13 A Yes.
14 Q Did he go for treatment at Lee Avenue?
15 A Yes.
16 Q What kind of treatments did he receive?
17 A Colds, shots, injections.
18 Q Did he ever see a skin doctor, a dermatologist?
19 A For myself?
20 Q No, for Wilfred.
21 A I don't remember.
22 Q And Angelo Gonzalez is who?
23 A I don't know.
24 Q Male, 22 years old, 1974? You don't know who
25 he is?

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1 rnr 2 Gonzalez-cross

2 A No.

3 Q Do you know who Barbara Gonzalez is?

4 A Yes, my daughter.

5 Q When did she go to the Lee Avenue clinic for
6 treatment?

7 A She was about a month or two months, and her
8 hand didn't move, so I went to the pediatrician.

9 Q Who did she see there?

10 A I don't recall his name.

11 Q Outside of the chiropractor that you are sure
12 you only saw once and possibly a second time, you are really
13 not sure about how many times you have seen any other doctor
14 there, is that correct?

15 A Well, I can say I went many times.

16 Q You are not sure about the number of times?

17 A No.

18 Q You are not sure of the number of times any
19 of your children saw doctors there?

20 A Well, it was more than twice.

21 MR. WEISENFELD: No further questions.

22 MR. BLOCH: I would like to read from the
23 exhibit marked in evidence: Wilfred Gonzalez shown as
24 going to Dr. Feder.

25 THE COURT: You are excused.

1 rmr 3

Gonzalez-cross

2 MR. WEISNFELD: May I ask one more question?

3 THE COURT: Yes.

4 BY MR. WEISNFELD:

5 Q Did you ever see a foot doctor?

6 A Yes.

7 Q Are you sure it wasn't a foot doctor who put
8 the Ace bandage on?

9 A No, because it was in another medical center.

10 Q Did you ever go to a podiatrist at Lee Avenue?

11 A No.

12 Q Do you remember or you just don't think that you
13 went?

14 A I don't think I did.

15 MR. WEISNFELD: No further questions.

16 (Witness excused.)

17 THE COURT: Next witness.

18 MR. BLOCH: The Government calls Margaret Jackson.

19 M A R G A R E T J A C K S O N, called as a

20 witness by the Government, being first duly sworn,

21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BLOCH:

24 Q Mrs. Jackson, where do you live?

25 A 685 DeKalb Avenue, Brooklyn.

1 rmr 4 Jackson-direct

2 Q Where were you living in 1972?

3 A 246 Willoughby Street, Brooklyn.

4 Q Are you employed?

5 A Yes, I am.

6 THE COURT: I will let you lead on these pre-
7 liminary questions.

8 Q Are you employed part time?

9 A Yes.

10 Q At a laundry?

11 A At a drycleaners, yes.

12 Q Are you on Medicaid?

13 A Yes.

14 Q Have you had the same Medicaid number since you
15 have been on Medicaid?

16 A Yes, I have.

17 Q Were you on Medicaid in 1972?

18 A Yes, I was.

19 Q Have you ever lost your Medicaid card?

20 A No.

21 Q Have you ever lent your Medicaid card to anyone
22 else?

23 A No.

24 Q Did there come a time when you visited a
25 chiropractor?

1 rmrf 5 Jackson-direct

2 A Yes.

3 Q When was that?

4 A Approximately four and a half years ago.

5 Q Where did you visit this chiropractor?

6 A At Lee Avenue.

7 Q For what reason did you see him?

8 A I was referred to him by my doctor for a back

9 problem.

10 Q What if anything happened when you visited the

11 chiropractor?

12 A He examined me and gave me a back massage and

13 gave me another appointment to come back another date.

14 Q Did you lie on a couch?

15 A Yes, I did.

16 Q When, if ever, did you see him again?

17 A On my second visit I saw him again.

18 Q How much after the first visit was that?

19 A About a week.

20 Q What if anything occurred on the second visit?

21 A He examined me and he told me that I had a spinal

22 problem.

23 Q How did he examine you?

24 A He stood me in front of a mirror and showed me

25 that my spine was crooked.

1 rmrf 6 Jackson-direct

2 Q Did you go back for further treatment?

3 A No.

4 Q For what reason did you not go back?

5 A Because I didn't believe him.

6 Q Didn't believe him about what?

7 A That my spine was crooked.

8 Q Why was that?

9 A Because at the time I was standing in front of

10 the mirror and he placed his fingers behind my head and

11 showed me that my head was crooked.

12 Q How many times had you been to a chiropractor

13 before?

14 A Never.

15 Q How many times have you been since the two times

16 you visited that chiropractor?

17 A Never.

18 Q Anywhere?

19 A No.

20 Q I show you Government's Exhibit 19 in evidence.

21 Is that your name and Medicaid number on this invoice?

22 A I have to look at my Medicaid card to check

23 the number.

24 MR. BLOCH: Perhaps counsel will stipulate?

25 MR. WEISENFELD: So stipulated.

1 rmr 7 Jackson-direct

2 THE COURT: He said this morning he doesn't
3 challenge that the Medicaid numbers match.

4 A Yes, it is.

5 Q Did you visit a chiropractor at Lee Avenue for
6 the 11 visits in one month as shown on that invoice?

7 A No, sir.

8 MR. BLOCH: No further questions.

9 CROSS EXAMINATION

10 BY MR. WEISENFELD:

11 Q The invoice doesn't show 11 visits in one month,
12 it shows --

13 THE COURT: Sustained. It speaks for itself.

14 Q Where did you say you work?

15 A Kirk Drvcleaners.

16 Q Were you interviewed by Mr. McNally from my
17 office?

18 A Yes.

19 Q Did you tell him you worked as a manager of
20 Dudy's Restaurant, 685 DeKalb Avenue?

21 A No, sir, I did not explain it to him like that.

22 Q What did you tell him?

23 A I explained to him I had at that time two weeks'
24 work because the owner wanted to go on vacation, but due
25 to this I only got one week's work.

1 rrrf 8 Jackson-direct

2 Q You were temporarily employed there?

3 A Yes.

4 Q You went to the Lee Avenue clinic for six years,
5 1960 through 1975?

6 A Approximately, yes.

7 Q How many visits over the six-year period did you
8 make to Lee Avenue?

9 A I couldn't say offhand. Dr. Alizadah was my
10 doctor all the time.

11 Q Did you tell Mr. McNally when he asked you that
12 he went to the clinic about 25 times in all, your visits,
13 not your daughter's?

14 A I told him approximately.

15 Q What is the approximate number of times --

16 A Approximately 25 or more.

17 Q Of the 25 times that you went to Lee Avenue,
18 approximately how many occurred in 1972?

19 A I have no idea, sir.

20 Q What about your daughter, is that Margaret also?

21 A Yes.

22 Q How many visits did she make to Lee Avenue?

23 A She went there from a baby up until a year ago
24 and I can't really say.

25 Q I would like you to look at your medical records

1 rmr 9

Jackson-cross

2 MR. WEISENFELD: I ask these be marked
3 Defendant's Exhibit G.

4 (Defendant's Exhibit G marked for
5 identification.)

6 Q I would like you to look at your medical
7 records and I would like you to see if it refreshes your
8 recollection as to how many times you went to the clinic
9 over the period of time 1969 to 1975?

10 A There would be no way I can tell, because I
11 can't read it.

12 Q I am just talking about the dates. Just count
13 up how many dates there are.

14 A I can't even read this and tell what is what here.
15 You are showing me something that I don't know really
16 anything about.

17 Q Do you see on the cards, every time there is
18 a visit there is a date.

19 A Approximately 25 or more.

20 Q What if I told you it is actually 80 or 81
21 visits, would you still think it was 25, approximately?

22 A I was just giving you a guess. I don't remember.

23 Q You can't tell me how many times Margaret, Jr.
24 went?

25 A No. Like I say, she went from a baby until a

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1 rrnf 10 Jackson-cross

2 year ago.

3 Q In 1972 can you tell me how many times you saw
4 Dr. Alizadeh?

5 A I saw him quite frequently because I was having
6 trouble with my stomach.

7 Q Didn't you also go for headaches?

8 A Yes.

9 Q Is it a fact that the voucher of Dr. Napoli
10 shows you went there for migraine?

11 A It shows that, but I did not go to Dr. Napoli
12 for migraines.

13 Q What other doctors do you remember going to
14 at the Lee Avenue clinic in 1972?

15 A Ear doctor, eye doctor.

16 Q Do you remember how many times?

17 A To the ear doctor, I went quite a few times.

18 Q Did you tell Mr. McNally you went two times
19 to the ear doctor?

20 A He asked me and I told him approximately two
21 times. That is what he wrote down.

22 Q Approximately two times, but now you say many
23 times?

24 A A few times. I have problems with my ears.

25 Q How many times did you go to the eye doctor?

